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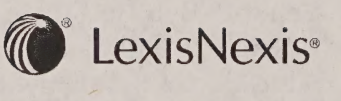

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TITLE 20

PUBLIC HEALTH AND WELFARE

(CHAPTERS 1-44 IN VOLUME 20A; CHAPTERS 17-55 IN VOLUME 20B)

SUBTITLE 4. FOOD, DRUGS, AND COSMETICS

SUBTITLE 5. SOCIAL SERVICES

SUBTITLE 4. FOOD, DRUGS, AND COSMETICS

CHAPTER 56

GENERAL PROVISIONS

Subchapter 2 — Food, Drug, and Cosmetic Act

20-56-209. Misbranded food.

A food shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in package form, unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established by rules prescribed by the State Board of Health;

(6) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as considered as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by rules or regulations as provided by § 20-56-219 or by the Federal Food, Drug, and Cosmetic Act, unless:

(A) It conforms to the definition and standard; and

(B) Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by rules or regulations, the common names of optional ingredients other than spices, flavoring, and coloring present in the food;

(8) If it purports to be or is represented as:

(A) A food for which a standard of quality has been prescribed by rules or regulations as provided in § 20-56-219 or by the Federal Food, Drug, and Cosmetic Act and its quality falls below the standard, unless its label bears, in such manner and form as the rules or regulations specify, a statement that it falls below the standard; or

(B) A food for which a standard of fill of container has been prescribed by rules or regulations as provided by § 20-56-219, and it falls below the standard of fill of container applicable thereto unless its label bears, in such manner and form as the rules or regulations specify, a statement that it falls below the standard;

(9) If it is not subject to the provisions of subdivision (7) of this section, unless it bears labeling clearly giving:

(A) The common or usual name of the food, if there is any; and

(B)(i) In case it is fabricated from two (2) or more ingredients, the common or usual name of each ingredient, except that spices,

flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each.

(ii) However, to the extent that compliance with the requirements of subdivision (9)(B)(i) of this section is impractical or results in deception or unfair competition, exemptions shall be established by rules promulgated by the board;

(10) If it purports to be or is represented for special dietary uses unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by rules prescribed as necessary in order to fully inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subdivision (11) is impracticable, exemptions shall be established by rules promulgated by the board; and

(12) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product's being adulterated or misbranded.

History. Acts 1953, No. 415, § 11; A.S.A. 1947, § 82-1111; Acts 2019, No. 315, §§ 2161-2165.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (5)(B), (9)(C), (10), and (11); and inserted "rules or" throughout (7) and (8).

20-56-211. Misbranded drug or device.

A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor. However, in the case of any drug subject to subdivision (11) of this section, the label shall contain the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor thereof; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules prescribed by the State Board of Health;

(3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it is for use by humans and contains any quantity of narcotic or hypnotic substance, alpha-sucaine, barbituric acid, beta-sucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or

any chemical derivative of such substances, which derivative has been designated as habit-forming by regulations promulgated under § 502(d) [repealed] of the Federal Food, Drug, and Cosmetic Act unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement "Warning — May be habit-forming";

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

(A) The common or usual name of the drug, if there is any; and

(B) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, stophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein. However, to the extent that compliance with the requirements of this subdivision (5)(B) is impracticable, exemptions shall be established by rules promulgated by the board;

(6) Unless its labeling bears:

(A) Adequate directions for use; and

(B) Such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users. However, where any requirement of subdivision (6)(A) of this section as applied to any drug or device is not necessary for the protection of the public health, the board shall promulgate rules exempting the drug or device from the requirements;

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. However, the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the *United States Pharmacopoeia* and the *Homeopathic Pharmacopoeia of the United States*, it shall be subject to the requirements of the *United States Pharmacopoeia* with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the *Homeopathic Pharmacopoeia of the United States* and not to those of the *United States Pharmacopoeia*;

(8) If it has been found by the board to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the board shall by rule require as necessary for the protection of public health. No such rules shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body shall have failed within a reasonable time to prescribe the requirements;

(9)(A) If it is a drug and its container is so made, formed, or filled as to be misleading;

(B) If it is an imitation of another drug; or

(C) If it is offered for sale under the name of another drug;

(10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof; or

(11) If it is a drug other than those covered by Acts 1951, No. 184 [repealed], and intended for use by humans which:

(A) Is a habit-forming drug to which subdivision (4) of this section applies;

(B) Because of its toxicity or other potentiality for harmful effect, or the method of use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a physician, dentist, or veterinarian; or

(C) Is limited by an effective application under § 505 [repealed] of the Federal Food, Drug, and Cosmetic Act to use under professional supervision by a physician, dentist, or veterinarian unless it is dispensed only:

(i) Upon a written prescription of a physician, dentist, or veterinarian; or

(ii)*(a)* By refilling a written or oral prescription if the refilling is authorized by the prescriber.

(b) However, a drug dispensed by filling or refilling a written prescription of a physician, dentist, or veterinarian is exempt from the requirements of this section except subdivisions (1) and (9) of this section if the drug bears a label containing:

(1) The name and address of the dispenser;

(2) The serial number and date of the prescription or its filling;

(3) The name of the prescriber;

(4) If stated in the prescription, the name of the patient; and

(5) The directions for use and cautionary statements, if any, contained in the prescription.

(c) This exemption does not apply to a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

History. Acts 1953, No. 415, § 15; 1977, No. 938, § 1; A.S.A. 1947, § 82-1115; Acts 2013, No. 1331, §§ 2, 3; 2019, No. 315, §§ 2166-2169.

Amendments. The 2019 amendment substituted "rules" for "regulations" throughout the section; and substituted "rule" for "regulation" in the first sentence of (8).

20-56-213. Misbranded cosmetic.

A cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by rules prescribed by the State Board of Health;

(3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(4) If its container is so made, formed, or filled as to be misleading.

History. Acts 1953, No. 415, § 17; A.S.A. 1947, § 82-1117; Acts 2019, No. 315, § 2170.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (2)(B).

20-56-214. False or misleading advertisement.

(a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b)(1)(A) For the purpose of this subchapter, the advertisement of a drug or device shall also be deemed to be false if the advertisement represents the drug or device to have any effect on any of the following diseases or conditions:

(i) Albuminuria;
(ii) Appendicitis;
(iii) Arteriosclerosis;
(iv) Blood poison;
(v) Bone disease;
(vi) Bright's disease;
(vii) Cancer;
(viii) Carbuncles;
(ix) Cholecystitis;
(x) Diabetes;
(xi) Diphtheria;
(xii) Dropsy;
(xiii) Erysipelas;
(xiv) Gallstones;
(xv) Heart and vascular diseases;
(xvi) High blood pressure;
(xvii) Mastoiditis;
(xviii) Measles;
(xix) Meningitis;
(xx) Mumps;
(xxi) Nephritis;
(xxii) Otitis media;
(xxiii) Paralysis;

(xxiv) Pneumonia;
(xxv) Poliomyelitis or infantile paralysis;
(xxvi) Prostate gland disorders;
(xxvii) Pyelitis;
(xxviii) Scarlet fever;
(xxix) Sexual impotence;
(xxx) Sexually transmitted disease;
(xxxi) Sinus infection;
(xxxii) Smallpox;
(xxxiii) Tuberculosis;
(xxxiv) Tumors;
(xxxv) Typhoid; or
(xxxvi) Uremia.

(B) An advertisement of a drug or device shall not be deemed to be false under this subsection if the advertisement is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of the drug or device.

(2) However, whenever the State Board of Health determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in subdivision (b)(1)(A) of this section, the board shall by rule authorize the advertisement of drugs having curative or therapeutic effect for the disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health.

(3) This subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History. Acts 1953, No. 415, § 18; A.S.A. 1947, § 82-1118; Acts 2007, No. 827, § 170; 2019, No. 315, § 2171.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (b)(2).

20-56-215. Prohibited acts.

The following acts and the causing thereof within the State of Arkansas are prohibited:

(1) The manufacture or sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated, misbranded, or abandoned;

(2) The adulteration, misbranding, or abandoning of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated, misbranded, or abandoned, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 20-56-217;

(5) The dissemination of any false advertisement;

(6) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by § 20-56-220;

(7) The giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the State of Arkansas from whom he or she recieved in good faith the food, drug, device, or cosmetic;

(8) The removal or disposal of a detained or embargoed article in violation of § 20-56-216;

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic if the act is done while the article is held for sale and results in the article's being misbranded; and

(10) Forging, counterfeiting, simulating, falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by rules promulgated under the provisions of this subchapter.

History. Acts 1953, No. 415, § 3; A.S.A. 1947, § 82-1103; Acts 1991, No. 924, § 2; 2019, No. 315, § 2172.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (10).

20-56-217. Contamination with microorganisms.

(a) Whenever the State Board of Health finds after investigation that the distribution in Arkansas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that the injurious nature cannot be adequately determined after the articles have entered commerce, it then, and in that case only, shall promulgate rules providing for the issuance of permits to manufacturers, processors, or packers of the class of food in the locality. To these permits shall be attached such conditions governing the manufacture, processing, or packing of the class of food for such temporary period of time as may be necessary to protect the public health. After the effective date of the rules and during the temporary period, no person shall introduce or deliver for introduction into commerce any food manufactured, processed, or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer holds a permit issued by the board as provided by the rules.

(b) The board is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of the permit. The board shall, immediately after prompt hearing and an inspection of the establishment, reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

(c) Any officer or employee designated by the board shall have access to any factory or establishment, the operator of which holds a permit from the board, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for the inspection shall be grounds for suspension of the permit until access is freely given by the operator.

History. Acts 1953, No. 415, § 12; A.S.A. 1947, § 82-1112; Acts 2019, No. 315, § 2173.

Amendments. The 2019 amendment substituted "rules" for "regulations" three times in (a).

20-56-218. Poisonous or deleterious substance — Rules for use.

(a) Any poisonous or deleterious substance added to any food, except where the substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of § 20-56-208(2), but when the substance is so required or cannot be so avoided, the State Board of Health shall promulgate rules limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of the public health. Any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of § 20-56-208(2).

(b) While such a rule is in effect limiting the quantity of any substance in the case of any food, the food shall not, by reason of bearing or containing any added amount of the substance not in excess of the limit established by rule, be considered to be adulterated within the meaning of § 20-56-208(1).

(c) In determining the quantity of the added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of the substance is required or cannot be avoided in the production of each article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

History. Acts 1953, No. 415, § 13; A.S.A. 1947, § 82-1113; Acts 2019, No. 315, § 2174.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a); and substituted "rule" for "regulation" twice in (b).

20-56-219. State Board of Health — Authority to regulate.

(a)(1) The authority to promulgate rules for the efficient enforcement of this subchapter is vested in the State Board of Health.

(2) The board is authorized to make the rules promulgated under this subchapter conform, insofar as practicable, with those promulgated under the Federal Food, Drug, and Cosmetic Act.

(b)(1) Before promulgating any rules contemplated by § 20-56-209(10), § 20-56-211(4), § 20-56-211(6)-(8), § 20-56-214(b), § 20-56-217, or subsection (c) of this section, the board shall give appropriate notice of the proposal and of the time and place for a hearing.

(2) The rule so promulgated shall become effective on a date fixed by the board which shall not be before thirty (30) days after its promulgation.

(3) The rule may be amended or repealed in the same manner as is provided for its adoption, except that, in the case of a rule amending or repealing a rule, the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(c)(1) Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate rules fixing and establishing for any food or class of food a reasonable definition and standard of identity or reasonable standard of quality or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the Federal Food, Drug, and Cosmetic Act.

History. Acts 1953, No. 415, §§ 9, 19; A.S.A. 1947, §§ 82-1109, 82-1119; Acts 2019, No. 315, § 2175.

Amendments. The 2019 amendment substituted "rules" for "regulations" and "rule" for "regulation" throughout the section.

Subchapter 3 — Medical Marijuana

20-56-305. Prohibitions on advertising and use of certain symbols.

(a)(1) A cultivation facility shall not advertise through any public medium or means designed to market products to the public.

(2) A cultivation facility may market products directly to a dispensary by any means directed solely to the dispensary and not available to the public.

(b)(1) Advertising for medical marijuana by a dispensary shall not:

(A) Contain a statement that is deceptive, false, or misleading;

(B) Contain any content that can reasonably be considered to target children, including without limitation:

(i) A cartoon character;

(ii) A toy; or

(iii) Any other similar item or image typically marketed to children;

(C) Encourage the transportation of medical marijuana across state lines;

(D) Display consumption of marijuana;

(E) Contain material that encourages or promotes marijuana for use as an intoxicant; or

(F) Contain material that encourages excessive or rapid use or consumption of medical marijuana.

(2) Advertising and marketing for medical marijuana shall include at least one (1) of the following statements:

(A) "Marijuana is for use by qualified patients only. Keep out of reach of children.";

(B) "Marijuana use during pregnancy or breastfeeding poses potential harms to an unborn child or child.";

(C) "Marijuana is not approved by the United States Food and Drug Administration to treat, cure, or prevent any disease."; or

(D) "Do not operate a vehicle or machinery under the influence of marijuana."

(3) A dispensary shall not make any deceptive, false, or misleading assertion or statement on any informational material, any sign, or any document provided to a consumer.

(4) A dispensary shall not place or maintain, or cause to be placed or maintained, any advertisement or marketing material for medical marijuana in the following locations:

(A) Within one thousand feet (1,000') of the perimeter of a public or private school or daycare center;

(B) On or in a public transit vehicle or public transit shelter; or

(C) On or in a publicly owned or operated property.

(5)(A) A dispensary shall not utilize television, radio, print media, or the internet to advertise and market medical marijuana, unless the dispensary has reliable evidence that no more than thirty percent (30%) of the audience for the program, publication, or website in or on which the advertisement is to air or appear is reasonably expected to be under eighteen (18) years of age.

(B) Upon request by the Alcoholic Beverage Control Division, a dispensary shall provide the evidence relied upon to make the determination that no more than thirty percent (30%) of the audience for the program, publication, or website in or on which the advertisement is to air or appear is reasonably expected to be under eighteen (18) years of age.

(6) A cultivation facility or dispensary shall not offer any coupons, rebates, or promotions for medical marijuana purchases, unless offered as part of a compassionate care plan presented to the Medical Marijuana Commission as part of the application for licensure.

(c)(1) A cultivation facility or dispensary shall have no more than three (3) signs visible to the general public from the public right-of-way that identify the cultivation facility or dispensary by the business name of the cultivation facility or dispensary.

(2) A sign shall not exceed thirty-six square feet (36 sq. ft.) in length or width.

(3) A sign shall be placed inside the window of the cultivation facility or dispensary or attached to the outside of the building of the cultivation facility or dispensary.

(4) A sign shall not display any content or symbol that:

(A) Can reasonably be considered to target children, including without limitation:

(i) A cartoon character;

(ii) A toy; or

(iii) A similar image or item typically marketed to children; or

(B) Is commonly associated with the practice of medicine or the practice of pharmacy, including without limitation:

(i) A cross of any color;

(ii) A caduceus; or

(iii) Any other symbol that is commonly associated with the practice of medicine, the practice of pharmacy, or health care in general.

History. Acts 2019, No. 928, § 2.

A.C.R.C. Notes. Acts 2019, No. 928, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Arkansas Constitution, Amendment 98, also known as the 'Arkansas Medical Marijuana Amendment of 2019', creates a medical marijuana program and authorizes the use of medical marijuana for certain medical conditions;

"(2) As with other medications, proper care and safety precautions are necessary to protect children and adults;

"(3) The Arkansas Code does not specify the regulation of the advertising or use of certain symbols relating to medical marijuana; and

"(4) It is necessary to protect the public health, safety, and welfare of the citizens of Arkansas to specify the regulation of the advertising or use of certain symbols relating to medical marijuana.

"(b) It is the intent of this act to prohibit certain advertising and use of certain symbols relating to medical marijuana."

20-56-306. Prohibitions on manufacturing and processing medical marijuana — Definition.

(a) As used in this section, "commercially available" means any candy, food, or beverage product that is produced or sold by a third party.

(b) A cultivation facility, dispensary, or processor shall not process or manufacture a medical marijuana product in a non-childproof package or container for consumption that:

(1) Is likely to appeal to minors due to shape, color, taste, or design, including without limitation:

(A) Products that are modeled after noncannabis products primarily consumed by and marketed to children;

(B) Products in the shape of an animal, vehicle, person, or character; and

(C) Products that contain cannabinoid concentrates or extracts that, as determined by the Alcoholic Beverage Control Division, closely resemble foods or beverages that are attractive to minors and that are commonly sold in retail establishments in individually packaged portions or in multiple packs of individually packaged

portions, regardless of whether the foods or beverages are generic, trademarked, or branded products, including without limitation candy, cookies, cakes, pastries, chewing gum, and brownies; or

(2) Is manufactured by applying cannabinoid concentrates or extracts to trademarked or branded food, candy, or beverages that are commercially available without cannabinoid concentrates or extracts and are commonly sold at retail establishments in individual portions or in multiple packs of individually packaged portions.

(c)(1) The division shall promulgate rules to implement this section.

(2)(A) When adopting the initial rules to implement this section, the final rules shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(i) On or before January 1, 2020; or

(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.

(B) The division shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.

History. Acts 2019, No. 989, § 2.

A.C.R.C. Notes. Acts 2019, No. 989, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Arkansas Constitution, Amendment 98, also known as the 'Arkansas Medical Marijuana Amendment of 2019', creates a medical marijuana program and authorizes the use of medical marijuana for certain medical conditions;

"(2) As with other medications, proper care and safety precautions are necessary to protect children and adults;

"(3) The Arkansas Code does not specify the regulation of the manufacturing and processing of medical marijuana; and

"(4) It is necessary to protect the public health, safety, and welfare of the citizens of Arkansas to specify the regulation of the manufacturing and processing of medical marijuana.

"(b) It is the intent of this act to prohibit certain manufacturing and processing of medical marijuana."

CHAPTER 57

REGULATION OF FOOD GENERALLY

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

20-57-102. Salvage of food — Definitions.

(a) As used in this section, unless the context otherwise requires:

(1) "Food salvage distributor" means a person, firm, or corporation that engages in the business of distributing, peddling, or otherwise trafficking in any salvaged products enumerated in the definition of a food salvager; and

(2) "Food salvager" means a person, firm, or corporation engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling, or by other means salvaging items and who sells, offers for sale, or distributes for human or animal consumption any salvaged food, beverage, including beer, wine and distilled spirits, vitamin, food supplement, dentifrice, drug, cosmetic, single-service food container or utensil, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means.

(b)(1) Food salvagers and food salvage distributors located in or operating in Arkansas shall obtain a permit from the Department of Health upon payment of a fee of one hundred fifty dollars ($150) as a condition of the right to carry on the business.

(2) Permits issued under this section shall not be transferable and shall be renewed annually.

(3) The department may issue permits for less than one (1) year. The cost of the permits shall be based upon the number of months the permit is valid divided by twelve (12) months multiplied by the annual permit fee.

(c) The State Board of Health is empowered to promulgate and enforce reasonable rules in order to assure that salvaged foods are safe for human or animal consumption, as the case may be.

(d) It shall be the duty of the Division of Environmental Health Protection of the Department of Health to administer the provisions of this section and the rules pursuant to it.

(e) All fees levied and collected under the provisions of this section are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(f)(1) A person who violates a provision of this section or a rule pursuant to it shall be punished by a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100) or shall be sentenced to imprisonment for not more than thirty (30) days, or both fine and imprisonment.

(2) Each day on which a violation of this section occurs or continues constitutes a separate offense and shall be punished accordingly.

(g) Subject to the rules which may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department is authorized to transfer all unexpended funds relative to the food salvager's permit that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1963, No. 241, §§ 1-8; 1977, No. 357, § 5; A.S.A. 1947, §§ 82-967 — 82-974; Acts 1987, No. 451, § 1; 1991, No. 378, § 1; 2019, No. 315, §§ 2176-2178.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (c) and (d); substituted "rule" for "regulation" in (f)(1); and deleted "and regulations" following "rules" in (g).

20-57-103. Donors of canned food, live food, or perishable food not liable — Exception — Definitions.

(a) As used in this section, unless the context otherwise requires:

(1) "Canned food" means any food commercially processed and prepared for human consumption;

(2) "Live food" means live or recently deceased animals, such as wild game or farm stock, that may be legally processed for use as food for human consumption; and

(3)(A) "Perishable food" means any food which may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition.

(B) "Perishable food" includes without limitation fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.

(b) The provisions of this section shall govern all good faith donations of perishable food which is not readily marketable due to appearance, freshness, grade, surplus, or other conditions, but nothing in this section shall restrict the authority of any appropriate agency to regulate or ban the use of the food for human consumption.

(c) All other provisions of law notwithstanding, a good faith donor of canned food, live food, or perishable food which is apparently fit for human consumption at the time it is donated to a bona fide charitable or not-for-profit organization for free distribution or distribution at a nominal cost is not subject to criminal or civil liability arising from an injury or death due to the condition of the food unless the injury or death is a direct result of the gross negligence, recklessness, or intentional misconduct of the donor.

History. Acts 1981, No. 73, §§ 1-3; A.S.A. 1947, §§ 82-998.1 — 82-998.3; Acts 2019, No. 946, § 1.

Amendments. The 2019 amendment substituted "canned food, live food, or" for "canned or" in the section heading and in (c); inserted (a)(2); redesignated former (a)(2) as (a)(3)(A) and (B); and made stylistic changes.

Subchapter 2 — Food Service Establishments

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-57-201. Definitions.

As used in §§ 20-57-203 — 20-57-205:

(1) "Cottage food production operation" means a person who produces food items in the person's home that are not potentially hazardous foods, including without limitation:

(A) Bakery products;

(B) Candy;

(C) Fruit butter;

(D) Jams;

(E) Jellies;

(F) Chocolate-covered fruit and berries that are not cut; and

(G) Similar products specified in rules adopted by the Department of Health;

(2)(A)(i) "Food service establishment" means any place where food is prepared, processed, stored, or intended for use or consumption by the public regardless of whether there is a charge for the food.

(ii) "Food service establishment" includes wholesale and retail food stores, convenience stores, food markets, delicatessens, restaurants, food processing or manufacturing plants, bottling and canning plants, wholesale and retail block and prepackaged ice manufacturing plants, food caterers, and food warehouses.

(iii) "Food service establishment" does not include supply vehicles or locations of vending machines.

(B) The following are also exempt:

(i) Group homes routinely serving ten (10) or fewer persons;

(ii) Daycare centers routinely serving ten (10) or fewer persons;

(iii) Potluck suppers, community picnics, or other group gatherings where food is served but not sold;

(iv) A person at a farmers' market that offers for sale only one (1) or more of the following:

(a) Fresh unprocessed fruits or vegetables;

(b) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper; or

(c) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total

space of which equals less than one hundred cubic feet (100 cu. ft.) on the premises where the person conducts business at the farmers' market;

(v) A person who offers for sale at a roadside stand only fresh fruits and fresh vegetables that are unprocessed;

(vi)*(a)* A cottage food production operation, on the condition that the operation offers its products directly to the consumer:

(1) From the site where the products are produced;

(2) At a physical or online farmers' market;

(3) At a county fair;

(4) At a special event; or

(5)(A) At a pop-up shop within another established business.

(B) As used in this subdivision (2)(B)(vi)*(a)*, "pop-up shop" means a cottage food production operation selling items in an unaffiliated established business for a limited time period with the consent of the owner of the unaffiliated established business and the owner or employee of the cottage food production operation being present at the point of sale.

(b)(1) Upon request, each product offered under subdivision (2)(B)(vi)*(a)* of this section shall be made available to the department for sampling.

(2) Each product shall be clearly labeled and shall make no nutritional claims.

(3) The label required under subdivision (2)(B)(vi)*(b)(2)* of this section shall include the following:

(A) The name and address of the business;

(B) The name of the product;

(C) The ingredients in the product; and

(D) The following statement in 10-point type: "This Product is Home-Produced";

(vii) A maple syrup and sorghum processor and beekeeper if the processor or beekeeper offers only maple syrup, sorghum, or honey directly to the consumer from the site where those products are processed;

(viii) A person who offers for sale only one (1) or more of the following foods at a festival or celebration, on the condition that the festival or celebration is organized by a political subdivision of the state and lasts for a period not longer than seven (7) consecutive days:

(a) Fresh unprocessed fruits or vegetables;

(b) Maple syrup, sorghum, or honey if produced by a maple syrup or sorghum processor or beekeeper; or

(c) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.);

(ix) A farm market that offers for sale at the farm market only one (1) or more of the following:

(a) Fresh unprocessed fruits or vegetables;

(b) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper; or

(c) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.) on the premises where the person conducts business at the farm market;

(x) An establishment that offers only prepackaged foods that are not potentially hazardous as defined by the State Board of Health; and

(xi) Ice vending machines or kiosks where ice is dispensed in the open air and that are totally self-contained; and

(3) "Food service industry" means the aggregate of food service establishments.

History. Acts 1977, No. 357, § 1; 1979, No. 734, § 1; A.S.A. 1947, § 82-997; Acts 1987, No. 903, § 1; 1989, No. 67, § 1; 1991, No. 378, § 2; 2009, No. 1403, § 1; 2011, No. 72, § 1; 2017, No. 399, §§ 1, 2; 2019, No. 775, § 1.

Amendments. The 2019 amendment added (2)(B)(vi)*(a)(5)*.

20-57-203. Secretary of the Department of Health — Powers and duties.

The Secretary of the Department of Health shall have:

(1) Power and authority to prevent the proliferation of infections, contagious, and communicable diseases resulting from unsanitary food service operations; and

(2) Direction and control over all sanitary and quarantine measures for dealing with all such diseases within the state and to suppress the diseases and prevent their spread.

History. Acts 1977, No. 357, § 6; A.S.A. 1947, § 82-997.4; Acts 2019, No. 910, § 5043.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the section heading and in the introductory language.

20-57-204. Permit required.

(a) No food service establishment shall be allowed to operate unless it has procured a food establishment permit from the Division of Environmental Health Protection of the Department of Health.

(b)(1) Permits issued under this section, §§ 20-57-201, 20-57-202 [repealed], 20-57-203, and 20-57-205 are not transferable, shall be renewed annually, and shall expire one (1) year after issuance or at a time specified by the Department of Health.

(2) A late fee equal to one-half (½) of the renewal fee for any type of food service establishment shall be charged to renew a permit sixty (60) days after the expiration date.

(c) Any food service establishment may obtain a food service permit by paying an annual permit fee of thirty-five dollars ($35.00) to the department and by meeting the minimum requirements established by the applicable rules.

(d) Each distinctively separate food establishment type and class as defined in §§ 20-57-201, 20-57-202 [repealed], 20-57-203 — 20-57-205

shall be required to procure a permit for that type or class per each location not to exceed a total of one hundred five dollars ($105).

(e)(1) A temporary food establishment permit shall be procured from the division by any temporary facility operating at a fixed location for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(2) A fee of five dollars ($5.00) shall be charged per day for each temporary food establishment permit.

(f) Public school cafeterias shall be exempt from payment of the permit fee but shall submit to inspection pursuant to the rules of the State Board of Health.

(g) Nonprofit organizations that sell food on a temporary basis for fund-raising events shall be exempt from payment of the permit fee but shall submit to inspection pursuant to the rules of the board.

(h) The following shall not be required to obtain permits, pay fees, or submit to inspections by the department but may seek the advice and assistance of the department:

(1) Potluck suppers;

(2) Community picnics; or

(3) Other group gatherings where food is served but not sold.

(i) Any retail food store having gross sales of less than one hundred fifty thousand dollars ($150,000) must obtain a food service permit but shall be exempt from payment of the permit fee.

(j) Any bottler of water that is not a resident of this state shall obtain a permit from the department in order to sell its bottled water within this state. The bottler shall submit to the department annually a bacteriological analysis conducted by a laboratory approved by the department, a certificate of operation from the bottler's resident state, and a permit fee of fifty dollars ($50.00).

History. Acts 1977, No. 357, § 3; 1980 (1st Ex. Sess.), No. 20, § 1; A.S.A. 1947, § 82-997.2; Acts 1987, No. 903, § 3; 1989, No. 67, § 3; 1991, No. 378, § 3; 1993, No. 130, § 1; 1993, No. 146, § 1; 1995, No. 168, § 1; 1997, No. 102, § 1; 1999, No. 217, §§ 1, 2; 2001, No. 467, § 1; 2001, No. 546, § 1; 2005, No. 394, § 1; 2009, No. 1403, § 2; 2011, No. 226, § 1; 2011, No. 1121, § 13; 2019, No. 315, §§ 2179, 2180.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c) and (f).

20-57-205. Disposition of funds.

(a) All fees levied and collected under the provisions of §§ 20-57-102 and 20-57-204 are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund to be used exclusively by the Division of Environmental Health Protection of the Department of Health for personnel, equipment, and training of sanitarians and food service industry personnel.

(b) Subject to such rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to the food service program that pertain to fees collected, as certified by the Chief

Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1977, No. 357, § 4; A.S.A. 1947, § 82-997.3; Acts 1987, No. 903, § 4; 1991, No. 378, § 4; 2019, No. 315, § 2181.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

20-57-207. Prevention of choking — Nonliability.

(a) The Secretary of the Department of Health shall study and approve instructions detailing first aid techniques and a poster diagramming first aid techniques designed and intended for use by a person without medical training in removing food which has become lodged in the throat of a choking victim.

(b) The secretary shall publish the approved instructions and poster and make them available to each food service operation in the state.

(c) Each food service operation shall post the instructions and the poster in places conspicuous to persons employed by or connected with the management of the food service operation in order that persons may become familiar with the techniques and may consult the instructions to provide relief to a choking victim.

(d) Failure of a food service operation to post the instructions and the poster as required by this section shall not subject the food service operation, any of its employees, or any persons connected with its management to any criminal penalty or to civil liability in an action for damages for personal injury or wrongful death arising from any choking emergency.

(e) Nothing in this section shall impose or be construed to impose a duty or obligation upon any food service operation, any of its employees, any person connected with its management, or any other person to remove, attempt to remove, or assist in removing food which has been lodged in the throat of a choking victim.

(f) No food service operation, employee of a food service operation, nor person connected with its management, nor any other person shall be liable in any civil action for damages for personal injury or wrongful death for not removing, not attempting to remove, or not assisting in the removal of food which has become lodged in the throat of a choking victim.

(g) No food service operation, employee of a food service operation, person connected with its management, nor any other person shall be liable in any civil action for damages for personal injury or wrongful death for any acts or omissions of any individual removing, attempting to remove, or assisting in the removal of food lodged in the throat of a choking victim in accordance with instructions supplied by the secretary.

History. Acts 1977, No. 204, § 1; 1985, No. 225, § 1; A.S.A. 1947, § 82-996; Acts 2019, No. 910, §§ 5044, 5045.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a); and substituted "secretary" for "director" in (b) and (g).

20-57-209. Pop-up shop inspections and restrictions.

(a) The Department of Health may inspect a cottage food production operation that operates as a pop-up shop as defined in § 20-57-201(2)(B)(vi)*(a)(5)* within another established business.

(b) A cottage food production operation that operates as a pop-up shop shall not sell or offer for sale foods at wholesale distribution.

History. Acts 2019, No. 775, § 2.

Subchapter 3 — Flour and Bread Enrichment Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-57-304. Penalty.

Any person who violates any of the provisions of this subchapter, or the orders or rules promulgated by the Secretary of the Department of Health under authority thereof, shall upon conviction be subject to a fine for each and every offense in a sum not exceeding five hundred dollars ($500) or to imprisonment for not more than six (6) months, or both fine and imprisonment.

History. Acts 1945, No. 214, § 8; A.S.A. 1947, § 82-941; Acts 2019, No. 315, § 2182; 2019, No. 910, § 5046.

Amendments. The 2019 amendment by No. 315 substituted "orders or rules" for "orders, rules, or regulations".

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health".

20-57-305. Powers and duties of State Board of Health and Secretary of the Department of Health.

(a) The State Board of Health is authorized as the administrative agency and is directed:

(1) To make, amend, and rescind such rules as may be necessary to carry out the provisions of this subchapter, including, but without being limited to, such orders and rules as it is specifically authorized and directed to make;

(2) From time to time to adopt such rules changing or adding to the required ingredients for flour or bread specified in §§ 20-57-302, 20-57-303, and 20-57-306 as shall be necessary to conform to the definitions and standard of identity of enriched flour and enriched bread from time to time promulgated by the appropriate federal agency pursuant to the Federal Food, Drug, and Cosmetic Act.

(b) All orders and rules adopted by the board pursuant to this subchapter shall be published in the manner prescribed in subsection (c) of this section and, within the limits specified by this subchapter, shall become effective upon such date as the Secretary of the Department of Health shall fix.

(c) Whenever under this subchapter publication of any notice, order, or rule is required, the publication shall be made at least three (3) times in ten (10) days in newspapers of general circulation in three (3) different sections of the state.

(d)(1) The secretary is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this subchapter through any officers or employees under his or her supervision.

(2) All officers and employees shall have authority to enter and inspect any factory, mill, warehouse, shop, or establishment where flour or bread is manufactured, processed, packed, sold, or held or any vehicle and any flour or bread therein, and all pertinent equipment, materials, containers, and labeling.

History. Acts 1945, No. 214, § 7; A.S.A. 1947, § 82-940; Acts 2019, No. 315, §§ 2183, 2184; 2019, No. 910, §§ 5047, 5048.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(1) twice and in (b); substituted "rules" for "regulations" in (a)(2); and deleted "or regulation" following "rule" in (c).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b); and substituted "secretary" for "director" in (d)(1).

20-57-306. Vitamins and other ingredients — Flour.

(a)(1) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale within this state or to ship into this state for human consumption in this state any flour, as defined in § 20-57-302, unless the following vitamins and other ingredients are contained in each pound of flour:

(A) Not less than two milligrams (2 mg) of vitamin B1 (thiamin);

(B) Not less than one and two-tenths milligrams (1.2 mg) of riboflavin;

(C) Not less than sixteen milligrams (16 mg) of niacin (nicotinic acid) or nicotinic acid amide (niacin amide); and

(D) Not less than thirteen milligrams (13 mg) of iron (Fe).

(2) In addition to the above ingredients, the enrichment of self-rising flour requires not less than five hundred milligrams (500 mg) of calcium.

(b) The ingredients and amounts listed in subsection (a) of this section are in accordance with the definition of enriched flour as promulgated by the United States Food and Drug Administration, 21 C.F.R. § 137.165.

(c) The enrichment of flour shall be accomplished by a milling process, addition of vitamins from natural or synthetic sources, addition of minerals, by a combination of these methods, or by any method which is permitted by the United States Food and Drug Administration with respect to flour introduced into interstate commerce.

(d) The Secretary of the Department of Health is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the federal definition of enriched flour when promulgated or as may from time to time be amended.

(e) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched flour.

(f)(1) The terms of this section shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate in such form as the secretary shall by rule prescribe, certifying that the flour will be:

(A) Resold to a distributor, baker, or other processor;

(B) Used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this subchapter; or

(C) Used in the manufacture of products other than flour, white bread, or rolls.

(2) It shall be unlawful for any purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History. Acts 1945, No. 214, § 3; A.S.A. 1947, § 82-936; Acts 2015, No. 1157, § 6; 2019, No. 315, § 2185; 2019, No. 910, §§ 5049, 5050.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in the introductory language of (f)(1).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (d); and substituted "secretary" for "director" in the introductory language of (f)(1).

CHAPTER 58

EGGS

SUBCHAPTER.
2. Arkansas Egg Marketing Act of 1969.

Subchapter 2 — Arkansas Egg Marketing Act of 1969

SECTION.

20-58-204. Penalties.

(a) Any person, firm, or corporation violating any of the provisions of this subchapter or rules of the Arkansas Livestock and Poultry Commission shall be guilty of a violation and shall upon conviction:

(1) For the first offense, be fined not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100);

(2) For the second offense, be fined not less than one hundred dollars ($100) nor more than two hundred fifty dollars ($250); and

(3) For the third offense, be fined not less than two hundred fifty dollars ($250) nor more than five hundred dollars ($500).

(b) In addition to fines, in the discretion of the court:

(1) For the first offense, his or her permit may be suspended not more than thirty (30) days;

(2) For the second offense, his or her permit may be suspended not more than sixty (60) days; and

(3) For the third offense or any subsequent offense, his or her grading and packing permit may be revoked.

(c) Public notice shall be made upon conviction of violation under this subchapter.

History. Acts 1969, No. 220, § 19; A.S.A. 1947, § 82-1322; Acts 2005, No. 1994, § 132; 2019, No. 315, § 2186.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the introductory language of (a).

20-58-214. Enforcement.

(a)(1) The Arkansas Livestock and Poultry Commission shall enforce the provisions of this subchapter and is authorized to make and promulgate such rules as may be necessary thereto.

(2) The rules shall be publicized and become effective ninety (90) days after adoption.

(b)(1) The commission and its authorized employees or agents are authorized to enter any store, vehicle, market, or any other business or place where eggs are bought, stored, sold, offered for sale, or processed. The commission is authorized to make such inspections as needed of eggs to determine if the grades of the eggs conform to grades as labeled on the exterior of the container.

(2) If the inspection determines that the eggs in the container do not conform to the grade as labeled on the exterior of the container, the commission or its employees or agents are authorized to examine the invoices and such other records as are needed to determine the cause and place of the violation of the rule of this subchapter.

(c) The commission and its authorized employees shall have the power to stop sale of and impound for evidence any containers of eggs offered for sale which are in conflict with any provisions of this subchapter.

History. Acts 1969, No. 220, § 17; A.S.A. 1947, § 82-1320; Acts 2019, No. 315, §§ 2187, 2188.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(1) and (a)(2); and substituted "rule" for "regulation" in (b)(2).

CHAPTER 59

MILK AND DAIRY PRODUCTS

SUBCHAPTER.

Subchapter 2 — Regulation of Manufacture and Sale Generally

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-59-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) MILK.

(A) "Whole milk" means the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, properly fed and kept, excluding that obtained within fifteen (15) days before or five (5) days after calving or such longer period as may be necessary to render the milk practically colostrum free, and when offered for sale must contain not less than three and one-fourth percent (3¼%) of butterfat, and eight and one-fourth percent (8¼%) solids not fat;

(B) Milk for manufacturing purposes may contain less than three and one-fourth percent (3¼%) of butterfat but must be delivered pure, sweet, and clean;

(C) "Skimmed milk" means milk from which a sufficient portion of milk fat has been removed to reduce its milk fat percentage to less than three and one-fourth percent (3¼%); and

(D) "Cream" means that portion of milk rich in butterfat which rises to the surface of the milk on standing or is separated from it by centrifugal force, containing not less than eighteen percent (18%) of butterfat;

(2) DAIRY PRODUCTS. "Dairy products or milk products" means the pure, clean, and wholesome milk, cream, pure milk fat, butter, cheese, ice cream, ice cream mix, evaporated milk, skimmed milk, condensed milk, sweetened condensed milk, condensed skimmed milk, sweetened condensed skimmed milk, dried milk, dried skimmed milk, or any derivatives of milk or combination of products made from milk;

(3) CHEESE.

(A) "Cheese" means the product made from the separated curd obtained by coagulating the casein of milk, skimmed milk, or milk enriched with cream. The coagulation is accomplished by means of rennet or other suitable enzyme, lactic fermentation, or by a combination of any two (2) processes. The curd may be modified by heat, pressure, ripening ferments, special molds, or suitable seasoning. Certain varieties of cheese are made from the milk of animals other than the cow, and any cheese defined in this subchapter may contain added coloring matter. The name "cheese" unqualified means cheddar cheese, American cheese, or American cheddar cheese;

(B) "Cheddar cheese", "American cheese", or "American cheddar cheese" means the cheese made by the cheddar process from heated and pressed curd obtained by the action of rennet on milk. It contains not more than thirty-nine percent (39%) water, and in the water-free substance, not less than fifty percent (50%) of milk fat;

(C) "Skim milk cheese" means cheese made from milk, the finished product of which contains less than fifty percent (50%) of butterfat based on the moisture-free substance or contains more than thirty-nine percent (39%) moisture;

(D) "Pasteurized cheese" or "pasteurized-blended cheese" means the pasteurized product made by comminuting and mixing, with the aid of heat and water, one (1) or more lots of cheese into a homogeneous, plastic mass. The unqualified name "pasteurized cheeses" or "pasteurized-blended cheese" is understood to mean pasteurized cheddar cheese or pasteurized blended cheddar cheese and applies to a product which conforms to the standard for cheddar cheese. Pasteurized cheese or pasteurized-blended cheese, bearing a varietal name, is made from cheese of the variety indicated by the name and conforms to the limits for fat and moisture for cheese of that variety;

(E) "Process cheese" means the modified cheese made by comminuting and mixing one (1) or more lots of cheese into a homogeneous plastic mass, with the aid of heat, with or without the addition of water, and with the incorporation of not more than three percent (3%) of a suitable emulsifying agent. The name "process cheese", unqualified, is understood to mean process cheddar cheese and applies to a product which contains not more than forty percent (40%) water and, in the water-free substance, not less than fifty percent (50%) milk fat. Process cheese, qualified by a varietal name, is made from cheese of the variety indicated by the name and conforms to the limits for fat and moisture for cheese of that variety;

(F) "Casein" means that product made from skimmed milk or buttermilk obtained by precipitating the casein by the addition of acids or whey. The casein may be subsequently washed, ground, and dried; and

(G) "Whey" means the product remaining after the removal of fat and casein from milk in the process of cheese making;

(4) Ice Cream — Frozen Desserts and Drinks.

(A) "Frozen desserts" means ice cream, ice cream mix, frozen malted milk, frozen custard, ice milk, milk sherbets, ice or ice sherbets, and imitation ice cream as defined in this subchapter when manufactured for commercial purposes;

(B) "Ice cream" means the pure, clean, frozen product made from a combination of two (2) or more of the following ingredients: milk products, eggs, egg products, water, and sugar with harmless flavoring and with or without harmless coloring and with or without added stabilizer composed of wholesome edible material. It contains not more than one-half of one percent (½ of 1%) by weight of stabilizer, not less than ten percent (10%) by weight of milk fat, and not less than eighteen percent (18%) by weight of total milk solids. However, when fruit, fruit juices, nuts, cocoa or chocolate, chocolate syrup, maple syrup, cakes or confections, or other wholesome pure food products are used for the purpose of flavoring, then it shall not contain less than ten percent (10%) by weight of milk fat and not less

than eighteen percent (18%) by weight of total milk solids, except for such reduction in milk fat and in total milk solids, as is due to the addition of the flavoring. In no such case shall it contain less than eight percent (8%) by weight of milk fat nor less than fourteen percent (14%) by weight of total milk solids. In no case shall any ice cream contain less than one and six-tenths pounds (1 6/10 lbs.) of total food solids per gallon;

(C) "Ice cream mix" means a product which results from the mixture of pure clean dairy products, sugar, and other products allowed in the use of ice cream and with or without harmless flavoring and coloring. In no case shall ice cream mix contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids. When fruit, nuts, cocoa or chocolate, maple syrup, cakes, or confections are used for the purpose of flavoring, then it shall not contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids, except for such reduction in milk fat and in total milk solids as is due to the addition of the flavoring, but in no case shall it contain less than eight percent (8%) by weight of milk fat nor less than fourteen percent (14%) by weight of total milk solids;

(D) "Frozen malted milk" means the pure, clean, semifrozen product made from the combination of milk products, malted milk, and one (1) or more of the following ingredients: eggs, sugar, dextrose, and honey, with or without flavoring and coloring and with or without edible gelatin or vegetable stabilizer, and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent (½ of 1%) by weight of edible gelatin or vegetable stabilizer, not less than three percent (3%) by weight of milk fat, nor more than ten percent (10%) by weight of total milk solids, and not less than one-half of one percent (½ of 1%) by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds (1 3/10 lbs.) of total food solids per gallon;

(E) "Fountain malted milk" means the pure, clean, semifrozen product made from the combination of milk products, malted milk, and one (1) or more of the following ingredients: eggs, sugar, dextrose, and honey, with or without flavoring and coloring and with or without edible gelatin or vegetable stabilizer; and it contains not more than one-half of one percent (½ of 1%) by weight of edible gelatin or vegetable stabilizer, not less than four percent (4%) by weight of milk fat, not less than twelve percent (12%) by weight of total milk solids, and not less than one-half of one percent (½ of 1%) by weight of malted milk;

(F) "Frozen custard" means French ice cream, French custard ice cream, ice custard, parfaits, and similar frozen products. Frozen custard is a clean wholesome product made from a combination of two (2) or more of the following ingredients: milk products, eggs, water,

and sugar, with harmless flavoring and with or without harmless coloring and with or without added stabilizers composed of wholesome edible material. It contains not more than one-half of one percent (½ of 1%) by weight of stabilizer, not less than ten percent (10%) by weight of milk fat, and not less than fourteen percent (14%) by weight of total milk solids. Frozen custard shall contain not less than two and one-half (2½) dozen of clean, wholesome egg yolks, or three-fourths pounds (¾ lbs.) of wholesome, dry egg yolk containing not to exceed seven percent (7%) of moisture, or one and one-half pounds (1½ lbs.) of wholesome frozen egg yolk containing not to exceed fifty-five percent (55%) of moisture, or the equivalent of egg yolk in any other form, for each ninety pounds (90 lbs.) of frozen custard. In no case shall any frozen custard contain less than one and six-tenths pounds (1 6/10 lbs.) of total food solids per gallon;

(G) "Ice milk" means the pure, clean, frozen product made from a combination of two (2) or more of the following ingredients: milk products, eggs, water, and sugar, with harmless flavoring and with or without added stabilizer composed of wholesome, edible material, and with or without harmless coloring. It contains not more than one-half of one percent (½ of 1%) by weight of stabilizers, not less than three percent (3%) and not more than ten percent (10%) by weight of milk fat and not less than fourteen percent (14%) by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds (1 3/10 lbs.) of total food solids per gallon;

(H) "Milk sherbet" means the pure, clean, frozen product made from milk products, water, and sugar, with harmless fruit, fruit acid, or fruit juice flavoring, and with or without harmless coloring, and with not less than thirty-five hundredths of one percent (35/100 of 1%) of acid as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome, edible material. It contains not less than four percent (4%) by weight of milk solids;

(I) "Ice or ice sherbet" means the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring and with or without milk products and with not less than thirty-five hundredths of one percent (35/100 of 1%) of acid as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome, edible material. It contains less than four percent (4%) by weight of milk solids; and

(J) "Imitation ice cream" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, ice milk, frozen malted milk, sherbet, or ice as defined in this law. No person shall sell imitation ice cream. However, "mellorine" and "mellorine mix" defined in subdivision (4)(J)(i)*(a)* of this section shall not be construed to be "imitation ice

cream", and nothing in this subchapter shall be construed to prevent or prohibit the manufacture or sale of "mellorine" and "mellorine mix" as defined:

(i)*(a)* DESCRIPTION.

(1) Mellorine is a food produced by freezing, while stirring, a pasteurized mix consisting of safe and suitable ingredients, including, but not limited to, milk-derived nonfat solids and animal or vegetable fat, or both, only part of which may be milk fat. Mellorine is sweetened with nutritive carbohydrate sweetener and is characterized by the addition of flavoring ingredients. Mellorine mix is a mix composed of the ingredients which are frozen to produce mellorine;

(2) Mellorine contains not less than one and six-tenths pounds (1 6/10 lbs.) of total solids to the gallon, and weighs not less than four and one-half pounds (4½ lbs.) to the gallon. Mellorine mix contains not less than three and two-tenths pounds (3 2/10 lbs.) of total food solids and shall weigh not less than nine pounds (9 lbs.) per gallon. Mellorine or mellorine mix contains not less than six percent (6%) fat and two and seven-tenths percent (2 7/10%) protein having a protein efficiency ratio (PER) not less than that of whole milk protein (one hundred eight percent (108%) of casein) by weight of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content of the finished food be less than four and eight-tenths percent (4 8/10%) or the protein content be less than two and two-tenths percent (2 2/10%). The protein to meet the minimum protein requirements shall be provided by milk solids, not fat or other milk-derived ingredients; and

(3) When calculating the minimum amount of fat and protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by two and one-half (2½); the weight of fruit or nuts used may be multiplied by one and four-tenths (1 4/10); and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by one and four-tenths (1 4/10);

(b) FORTIFICATION. Vitamin A is present in a quantity which will ensure that forty international units (40 IU) are available for each gram of fat in mellorine or mellorine mix within limits of good manufacturing practice;

(c) METHODS OF ANALYSIS. Fat and protein content and the protein efficiency ratio shall be determined by the following methods contained in the latest edition of Official Methods of Analysis of AOAC International:

(1) Fat content shall be determined by either the Babcock method or such method of testing as may be approved by the AOAC International or the American Dairy Science Association;

(2) Protein content shall be determined by one (1) of the following methods: "Nitrogen — Official Final Action", Kjeldahl Method, Section 16.226, or Dye Binding Method, Section 16.227; and

(3) Protein efficiency ratio shall be determined by this method: "Biological Evaluation of Protein Quality — Official Final Action" Sections 39.166 — 39.170;

(d) NOMENCLATURE. The name of the food is "mellorine". The name of the mix which is frozen to produce mellorine is "mellorine mix". The name of the food or mix on the label shall be accompanied by a declaration indicating the presence of characterizing flavoring; and

(e) LABEL DECLARATION. The common or usual name of each of the ingredients used shall be declared on the label, except that sources of milk fat or milk solids not fat may be declared, in descending order of predominance, either by the use of the term "milk fat" or "nonfat milk";

(ii) For the purpose of this definition and standard of identity, food fats are edible natural fats derived from vegetable sources including only such milk fat as is normally contained in the products enumerated in subdivision (4)(J)(iii) of this section. Harmless optional ingredients may be used to prevent fat oxidation in an amount not exceeding five one-thousandths of one percent (5/1000 of 1%) of the weight of the fat used. No edible vegetable oil shall be used which does not meet the standards prescribed by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301;

(iii) "Milk solids not fat" shall mean and include skim milk, evaporated or condensed concentrated skim milk, superheated condensed skim milk, sweetened condensed skim milk, nonfat dry milk solids, edible dry whey, cheese whey, sweet cream buttermilk, whether fluid, condensed, or dried, and any of the foregoing products from which all or a portion of the lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis;

(iv) "Sugar" or "other sweeteners" shall mean and include sugar, liquid sugar, dextrose, which is paste or syrup, invert sugar, lactose, corn sugar, dried or liquid corn syrup, maple sugar, honey, brown sugar, malt syrup, dried malt extract, and molasses, other than blackstrap;

(v) "Flavors" shall mean and include:

(a) Natural food flavoring;

(b) Artificial food flavoring;

(c) Fruit juice, which may be sweetened and thickened with stabilizer;

(d) Chocolate;

(e) Cocoa;

(f) Fruit which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted, or dried and which may be sweetened, thickened with stabilizer, and may be acidulated with citric, tartaric, malic, lactic, or ascorbic acid;

(g) Nut meats; and

(h) Confectionery; and

(vi) "Stabilizers" shall mean and include gelatins, algin, extractive of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth, cellulose gum, guar seed, gum, monoglycerides, or diglycerides, both of fat-forming fatty acids or other harmless stabilizer or emulsifier;

(5) Miscellaneous Products. Varieties, types, and kinds of milk and dairy products which are not defined in this section shall be manufactured and marketed under the standards of composition promulgated by the Bureau of Standards of the United States Food and Drug Administration, or may be promulgated by the Secretary of the Department of Health under authority vested in him or her to make and promulgate rules;

(6) Pasteurization. "Pasteurization" is defined to mean the heating of every particle of the milk, cream, ice cream mix, or milk products used in the manufacture of ice cream or butter to a temperature of at least one hundred forty-five degrees Fahrenheit (145° F) and held at the temperature for thirty (30) minutes, provided that any other method of pasteurization which has been proved of equal value may be used when approved by the American Dairy Science Association. Frozen dessert pasteurization vats shall be provided with recording thermometers and charts filed for record;

(7) Condensed or Evaporated Milk.

(A) "Condensed milk", "evaporated milk", or "concentrated milk" is that product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, and contains, all tolerances being allowed for, not less than twenty-five and one-half percent (25 ½%) of total solids and not less than seven and nine-tenths percent (7 9/10%) of milk fat;

(B) "Sweetened condensed milk", "sweetened evaporated milk", or "sweetened concentrated milk" is the product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, to which sugar or sucrose has been added. It contains, all tolerances being allowed for, not less than twenty-eight percent (28%) of total milk solids and not less than eight percent (8%) of milk fat;

(C) "Condensed skimmed milk", "evaporated skimmed milk", or "concentrated skimmed milk" is the product resulting from the evaporation of a considerable portion of the water from skimmed milk which contains, all tolerances being allowed for, not less than twenty percent (20%) of milk solids; and

(D) "Sweetened condensed skimmed milk", "sweetened evaporated skimmed milk", or "sweetened concentrated skimmed milk" is the product resulting from the evaporation of a considerable portion of the water from skimmed milk to which sugar or sucrose has been added. It contains, all tolerances being allowed for, not less than twenty-eight percent (28%) of milk solids;

(8) Butter.

(A) "Butter" is the food product usually known as "butter", and which is made exclusively from milk or cream, or both, with or without common salt and with or without additional coloring matter, to contain not less than eighty percent (80%) by weight of milk fat, all tolerances being allowed for;

(B)(i) "Renovated or process butter" is the product made by melting butter and reworking the butter, without the addition or use of chemicals or any substances except milk, cream, or salt, that contains not less than eighty percent (80%) butterfat or that is made in accordance with current standards established by the United States Food and Drug Administration.

(ii) Renovated or process butter may also contain harmless coloring matter.

(iii)*(a)* The amount of butterfat in the product of any manufacturer, or in any given quantity of butter or renovated or process butter shall be determined by taking three (3) samples from three (3) different packages of the manufacturer or from any one (1) tub or churning of butter and a careful analysis made by the official method adopted by the AOAC International.

(b) If this analysis shows less than eighty percent (80%) butterfat, the butter or renovated or process butter that was analyzed is deemed adulterated butter, and the manufacturer, upon conviction, is guilty of a Class A misdemeanor.

(c) Butter or renovated or process butter that is deemed adulterated butter shall be melted and reworked before being offered for sale;

(9) Cream.

(A) "Sour cream" is cream, the acidity of which is more than two-tenths of one percent (2/10 of 1%), expressed as lactic acid;

(B) "Sweet cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of fresh, clean, fine-flavored cream, the acidity of which does not exceed two-tenths of one percent (2/10 of 1%) calculated as lactic acid;

(C) "First grade cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of cream that is smooth, clean, free from undesirable odors and flavors, and shall contain not less than twenty-five percent (25%) of butterfat;

(D) "Second grade cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of cream that is too old to grade as "first grade" and may contain objectionable flavors and odors in a moderate degree; and

(E) "Unlawful cream or milk" means cream or milk which contains dirt, filth, gasoline, kerosene, or other foreign matter, or which has been contaminated by insects, rodents, or other animals or that is stale, cheesy, rancid, putrid, decomposed, or is otherwise unfit for human consumption; and

(10) Miscellaneous Definitions.

(A) "Dairy products plants" shall include all places where dairy products, as defined in this subchapter, are bottled, processed, frozen, or manufactured;

(B) "Milk or cream station" shall be considered to mean any place where milk or cream may be received or purchased and held for shipment or delivery to a dairy products plant;

(C) "Truck route" shall be considered to mean any person, as defined in subdivision (10)(G) of this section, collecting cream or milk from the producer for the purpose of manufacture into butter, cheese, ice cream, condensed or powdered milk, or for bottled purposes;

(D) "Field superintendent" shall be considered to mean any qualified person who is the authorized representative of any person, firm, company, or corporation engaged in buying, selling, or manufacturing dairy products and who has supervision over the procurement of raw materials to be manufactured into dairy products;

(E) "Station operator" shall be considered to mean any person who performs the act of sampling or testing milk, cream, or other dairy products, the test of which is to be used as a basis for making payment for the products;

(F) "Cream or milk grader" shall be considered to mean any person who shall have passed a satisfactory examination as to his or her qualifications and to have actually demonstrated his or her ability before the secretary or his or her assistants, to determine the quality of cream or milk purchased for the purpose of manufacture into dairy products; and

(G) The term "person" shall be considered to include an individual, or a partnership, corporation, or association.

History. Acts 1941, No. 114, § 1; 1953, No. 416, § 1; 1979, No. 521, § 1; 1983, No. 289, § 1; A.S.A. 1947, § 82-912; Acts 2015, No. 1157, § 7; 2019, No. 315, § 2189; 2019, No. 910, §§ 5051, 5052.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" at the end of (5).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (5); and substituted "secretary" for "director" in (10)(F).

20-59-202. Penalties.

Any person, firm, or corporation shall be guilty of a violation and shall be fined a sum not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300) if that person, firm, or corporation shall:

(1) Hinder, obstruct, or in any way interfere with the Secretary of the Department of Health or his or her deputies while discharging the duties of inspection;

(2) Obstruct or hinder in any way the secretary from carrying out the full meaning and intent of this subchapter;

(3) Refuse or fail to make the reports provided for by §§ 20-59-206 — 20-59-211 and 20-59-214 — 20-59-246;

(4) Refuse or neglect to conform to the rules of the Department of Health that have been published as provided in this subchapter regarding the care or condition of any animal kept for dairy purposes or for the sanitary conditions of any room, building, or place where dairy products are kept either for storage or for the purpose of sale and distribution; or

(5) Sell, exhibit, or offer for sale any dairy product that is adulterated.

History. Acts 1941, No. 114, § 5; A.S.A. 1947, § 82-916; Acts 2005, No. 1994, § 133; 2019, No. 315, § 2190; 2019, No. 910, § 5053.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (4).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (1); and substituted "secretary" for "director" in (2).

20-59-204. State Board of Health — Appointment of deputies — Rules and standards.

(a)(1) The State Board of Health is authorized and empowered to appoint such deputies and office assistants as in its judgment may be deemed necessary to fully carry out the provisions of this subchapter.

(2) The board is authorized and empowered to fix their compensation and to have full and complete control and supervision over them.

(b) The board is further authorized, when not inconsistent with this subchapter, to formulate and prescribe such reasonable rules and define and establish standards for dairy products included in this subchapter as may be deemed necessary to accomplish the purpose of this subchapter.

History. Acts 1941, No. 114, § 6; A.S.A. 1947, § 82-917; Acts 2019, No. 315, § 2191.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

20-59-205. Right of review — Definition.

(a) It shall be the duty of the State Board of Health of the Department of Health, and it is authorized and empowered through its constituted officers and agents as set out in this section, to perform the following acts. However, any aggrieved party shall have the right to apply to the circuit court in the county of his or her residence for a review of any summary action on the part of the board or its agents and for this purpose service of process upon the Secretary of the Department of Health at any place in this state shall constitute valid service in the application for review:

(1) Inspection of Plants. To inspect or cause to be inspected, as often as may be deemed practicable, all dairy products plants or any other places where dairy products are produced, manufactured, frozen, processed, kept, handled, stored, or sold within this state;

(2) Production and Sale Prohibited. To prohibit the production and sale of unclean, adulterated, unwholesome milk, cream, or other dairy products;

(3) Condemnation for Food. To condemn for food purposes by denaturing with harmless coloring all unclean or unwholesome dairy products wherever they may find those products;

(4) Samples. To take samples anywhere of any dairy products or imitation thereof and cause the samples to be analyzed or satisfactorily tested according to the method of the AOAC International in force at the time. The analyses or tests shall be preserved and recorded;

(5) Right of Entry. To enter during business hours all dairy products plants or other places where dairy products are manufactured, produced, frozen, processed, stored, sold, or kept for sale or transportation in order to perform their official duties;

(6) Price of Cream or Butterfat.

(A) To require that no person, firm, corporation, or association shall buy or offer to buy cream or butterfat for butter-making purposes without displaying the price to be paid for cream or butterfat according to grade of cream.

(B) The price shall be posted and displayed continuously during the business hours of the person, firm, or corporation buying cream, and the price, according to grade of cream, shall include all premiums and bonuses, if any, in letters and figures not less than two inches (2″) in height in such manner or place so that the price posted shall be plainly visible from the street in front of the building or place in which the purchase is made.

(C) It shall be deemed a violation hereof if there is:

(i) A failure on the part of the person, firm, corporation, or association, its agent, servant, or employee, to post the prices; or

(ii) A buying of cream or butterfat at a price different from that which is posted.

(D) All persons, firms, corporations, or associations, their agents, servants, or employees shall keep a record in their respective cream stations of the time and date on or at which changes in prices are made and posted.

(E) However, nothing in this subdivision (a)(6) shall be construed as to forbid or prevent:

(i) Incorporated cooperative associations from paying annually earned patronage dividends according to the statutes and decrees under which they are organized; or

(ii) Corporations paying annual dividends according to the statutes and decrees under which they are incorporated;

(7) Subpoenas.

(A) To issue subpoenas requiring the appearance of witnesses and the production of books, papers, reports, and records before the board or the Secretary of the Department of Health, in all cases where sufficient evidence of violation of this subchapter is filed with the secretary. The secretary shall have power to administer oaths with like effect as is done in courts of law in this state.

(B) It shall be the duty of any circuit court or the judge thereof upon application to issue an attachment for the witnesses and compel their attendance before the board or the secretary, to give testimony upon such matters as shall be lawfully required by the official. The court or judge shall have power, in cases of refusal, to punish for contempt, as in other cases of refusal to obey the orders and process of the court;

(8) Tests.

(A) To test milk, cream, and other dairy products for the purpose of ascertaining the percentages of butterfat or other ingredients contained therein.

(B) If the secretary or any of his or her deputies shall find upon testing that there is a variance of more than one percent (1%) of butterfat in a cream test or two-tenths of one percent (2/10 of 1%) in a milk test between his or her test and that made by any person engaged in buying or selling milk, cream, or other dairy products for the basis of payment, the secretary or deputy shall cause his or her test to be verified and substantiated by a recognized laboratory. If the chemist shall find that the test made by the secretary or deputy is correct, the test thus made and verified shall be admitted in evidence in all prosecutions for violation of this section. The secretary is authorized to recall and cancel the testor's permit of the person thus making false tests or to bring criminal action against the person, or both;

(9) Carrier Regulations.

(A) To forbid and prevent any common carrier to neglect or fail to remove or ship from its depot, within twenty-four (24) hours of its arrival there for shipment, any milk, cream, or other dairy products left at that depot for transportation.

(B) Railway and express companies and other common carriers shall provide and utilize sanitary ventilated rooms or canvas covers at depots or transfer points for the protection from extreme temperatures of all milk, cream, and ice cream received for shipment and not allow merchandise of a contaminating nature to be stored on or with the cream.

(C) Truck route operators shall protect milk and cream from extreme temperatures and unsanitary conditions during transportation by proper covering and separation to prevent contamination from other transportation products;

(10) Cans or Packers at Depot. To forbid and prevent milk or cream cans or ice cream packers to remain at a railroad or truck depot longer than forty-eight (48) hours from the date of their arrival, excepting individual farm shipments;

(11) Branded Containers.

(A) To forbid and prevent the use of any branded or registered cream can or milk can, ice cream, or frozen dessert packer or container for any other purpose than the handling, storing, or shipping of milk, cream, or frozen dessert.

(B) It shall be unlawful for any person or carrier other than the rightful owner, except with written consent of the owner thereof, to use, transport, or deliver any milk or cream can, whether filled with cream or milk or empty, or frozen dessert container, whether filled with frozen dessert or empty, to other than the rightful owner if the receptacle is marked with the brand or trademark of the owner, the brand or trademark being registered according to law with the Secretary of State;

(12) Alteration of Brand — Return of Containers.

(A) To forbid and prevent any person other than the rightful owner thereof to in any way alter the mark or brand or ownership identification on any milk or cream can or other dairy receptacle without written consent of the owner.

(B) Every person, firm, or corporation purchasing frozen desserts in cans and shipping bags which are to be returned to the manufacturer shall cause the cans to be washed and cleaned as soon as emptied, and the bags stored in a dry place, or returned at once;

(13) Samples of Frozen Desserts. To take samples of frozen desserts, ice cream, or other frozen dairy products for official testing at the factory where desserts are frozen or from an unopened container of frozen desserts or other frozen dairy products, according to a method approved by the AOAC International or the American Dairy Science Association;

(14) Containers Used for Other Purposes. To forbid and prevent the sale or storage of milk, cream, or other dairy products in milk or cream cans which have previously contained kerosene, gasoline, turpentine, oil, or products or byproducts of a similar nature; and

(15) Dairy Product Definitions and Standards of Identity and Labeling Requirements.

(A) To adopt the definitions and standards of identity for milk, milk products, cheeses, and frozen desserts found at 21 C.F.R., Parts 131, 133, and 135, and to adopt any amendments or additions made thereunder. The board may adopt definitions and standards of identity of milk products, cheeses, and frozen desserts if they are not found at 21 C.F.R. All packages enclosing milk, milk products, cheeses, and frozen desserts shall be labeled in accordance with the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, and regulations promulgated thereunder.

(B) Provided, that the board shall not change, correct, adopt, or promulgate rules or other health code standards pertaining to the dairy industry of Arkansas, as defined in this section, until such changes have been reviewed by active Arkansas milk producers marketing agents, herein referred to as the "agents", and by the Arkansas Dairy Products Association, hereinafter referred to as the "association", in regular or especially called meetings of the agents and the association, or the governing bodies thereof. However, if meetings of the agents and the association are not held within thirty (30) days after a written notice by the board of intent to change,

correct, adopt, or promulgate rules, the review of the agents and the association shall be deemed waived.

(C) Notice as required by this subsection shall be given in writing by ordinary mail, or be hand delivered, to the agents and to the Director of the Arkansas Dairy Products Association.

(D) The Secretary of the Department of Health or the board may change, correct, adopt, or promulgate rules pertaining to the dairy industry of Arkansas in times of emergency or natural disaster without notice to the agents and the association.

(E) As used in this subchapter, the term "dairy industry of Arkansas" means Grade "A" milk plants, milk manufacturing plants, ice cream plants, milk producers, milk producer-distributors, milk haulers, milk distributors, dairy farms, receiving stations, and transfer stations.

(b) Nothing in this subchapter shall be construed to deprive any city of the first class or city of the second class of any of its police powers now or hereafter granted.

(c) Nothing in this section or in any other section of this subchapter shall be construed as authorizing or directing in any fashion the board to assume, to take over, or to discharge exclusively any of the functions and duties or responsibilities customarily performed by cities of the first class or cities of the second class, operating under and enforcing an ordinance approved by the Department of Health dealing with dairy or other sanitary milk inspection work or the bacteriological sampling of milk.

(d) The duties discharged under the terms of this subchapter shall be discharged insofar as is practicable and reasonable in cooperation with the municipal authorities wherever such authorities exist.

History. Acts 1941, No. 114, § 2; A.S.A. 1947, § 82-913; Acts 1989, No. 27, § 1; 2019, No. 315, §§ 2192, 2193; 2019, No. 910, § 5054.

Amendments. The 2019 amendment by No. 315 deleted "or regulations" following "rules" in the first sentence of (a)(15)(B); and deleted "and regulations" following "rules" in the second sentence of (a)(15)(B) and in (a)(15)(D).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" throughout the section.

20-59-206. Dairy plant license.

(a) A dairy products plant manufacturing, processing, or packaging any dairy products other than those listed in § 20-59-207 as frozen desserts shall be required to have a dairy plant license.

(b) Every person buying or receiving milk, cream, or dairy products for manufacturing, processing, or packaging shall be required to procure from the Secretary of the Department of Health an annual dairy plant license for each location where milk, cream, or dairy products are received for the purpose of manufacturing, processing, or packaging.

(c) License fees for plant licenses shall be as follows:

(1) For a plant purchasing fluid milk, the fee shall be based on the pounds of fluid milk received the previous year:

Up to and including 5,000,000 lbs. milk	$ 100.00
5,000,001 — 15,000,000 lbs.	200.00
15,000,001 — 25,000,000 lbs.	400.00
25,000,001 — 40,000,000 lbs.	600.00
40,000,001 — 60,000,000 lbs.	800.00
60,000,001 lbs. and up	1,000.00

(2) For a plant receiving cream, the fee shall be based on pounds of butterfat received the previous fiscal year:

Up to and including 200,000 lbs. butterfat	$ 100.00
200,001 — 400,000 lbs.	200.00
400,001 — 600,000 lbs.	400.00
600,001 — 1,000,000 lbs.	600.00
1,000,001 lbs. and up	800.00

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2: A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 1991, No. 328, § 1; 2019, No. 910, § 5055.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b).

20-59-207. Frozen dessert manufacturer's license.

(a) For purposes of licensing, a dairy plant manufacturing or packaging frozen dessert such as ice cream, ice cream mix, ice milk, ice milk mix, frozen malted milk, frozen custard, ice or ice sherbets, and novelties shall be licensed as a frozen dessert manufacturer.

(b) Any person making frozen dessert for sale shall be required to procure from the Secretary of the Department of Health an annual frozen dessert manufacturer's license for each location or plant where frozen dessert is manufactured.

(c) License fees for frozen dessert manufacturers' licenses shall be based on the gallons of mix or the finished products manufactured or sold the previous year. License fees shall be based on previous year's production:

Up to and including 10,000 gallons	$ 60.00
10,001 — 20,000 gallons	100.00
20,001 — 100,000 gallons	200.00
100,001 — 350,000 gallons	400.00
350,001 — 500,000 gallons	600.00
500,001 — 750,000 gallons	800.00
750,001 — 1,000,000 gallons	1,000.00
1,000,001 gallons and up	1,200.00

History. Acts 1941, No. 114, § 4; 1973, No. 98, 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 1991, No. 328, § 2; 2019, No. 910, § 5056.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b).

20-59-210. Sampler and grader license.

(a) Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in his or her employ, in or on each milk transport tank truck, a licensed milk sampler and grader.

(b) Applications to become a licensed sampler and grader shall be made to the Secretary of the Department of Health upon such forms as he or she may prescribe.

(c) An annual license fee of ten dollars ($10.00) shall be required of each person who qualifies for a license.

(d) The license shall expire on April 1 of each succeeding year.

(e) In order to qualify for a license, the applicant shall satisfy the secretary, either by a written examination or otherwise, that he or she is honest and competent to do sampling work.

(f) An identification card stating his or her name and address and bearing the same number as his or her license shall be issued to him or her at the time his or her license is issued and shall be carried on his or her person at all times while on duty.

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 2019, No. 910, §§ 5057, 5058.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b); and substituted "secretary" for "director" in (e).

20-59-211. Milk tester license and fee.

(a) Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in his or her employ, a licensed milk tester to make the official analysis, and no other person shall be allowed to make the tests in any creamery, cheese factory, milk depot, milk plant, ice cream factory, milk condensery, or similar plant where milk or cream is bought or received on a basis of its chemical or physical constituents.

(b) Application to become a licensed milk tester shall be made to the Secretary of the Department of Health upon such forms as the secretary may prescribe.

(c) All licenses shall expire on the next succeeding April 1, and the fee shall be ten dollars ($10.00). The required fee shall accompany the application.

(d) If the applicant shall be found upon examination to be qualified and competent, the secretary shall issue to him or her a license.

(e) Licensed testers are also qualified and permitted to act as samplers.

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 2019, No. 910, §§ 5059, 5060.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b); and substituted "secre-

tary" for "director" in (b) and (d).

20-59-213. Dairy products from another state.

(a) It is required that all dairy products as defined by § 20-59-201(2) shipped into this state from another state shall meet the sanitary standards, definitions, and requirements of Arkansas law and the rules promulgated by the State Board of Health.

(b) The board is authorized to establish acceptable reciprocal inspection authorities, interstate and intrastate, to properly enforce and administer this section in accordance with specifications and rules adopted.

(c) A reasonable fee to be determined by the board shall be charged for all out-of-state inspections where reciprocal inspections are not available and cannot be negotiated.

History. Acts 1973, No. 70, § 1; A.S.A. 1947, § 82-912.1; Acts 2019, No. 315, § 2194.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a); and subsituted "rules" for "regulations" in (b).

20-59-226. Unlawful acts — Removing label of health officer.

It shall be unlawful to remove or deface any tags or labels which have been attached by the Secretary of the Department of Health or his or her deputies to a receptacle containing cream, milk, or other dairy products.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914; Acts 2019, No. 910, § 5061.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health".

20-59-232. Unlawful acts — Records of cream buyers — Monthly reports.

It shall be unlawful for all cream buyers to purchase cream without keeping a careful record of all cream bought as first grade and second grade, and they shall render the report regularly to the creamery or factory receiving the cream. Creameries shall report the above information monthly, together with other cream purchase reports to the Secretary of the Department of Health on forms furnished them.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914; Acts 2019, No. 910, § 5062.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the second sentence.

20-59-234. Unlawful acts — Operation without permit.

It shall be unlawful for any person, firm, or corporation to operate a dairy products plant, including milk and cream stations, or freeze or

manufacture frozen desserts, or operate a condensery depot within the State of Arkansas without having first secured a permit, except as provided for in § 20-59-244, signed by the Secretary of the Department of Health and bearing the seal of his or her office. The permit shall be displayed conspicuously at the place of business.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914; Acts 2019, No. 910, § 5063.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the first sentence.

20-59-243. Unlawful acts — Graded milk.

It shall be unlawful to label, sell, or offer for sale any milk as graded milk unless the grade is officially awarded by the Secretary of the Department of Health having jurisdiction in accordance with the provisions of the United States Public Health Service Standard Milk Ordinance and Code.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914; Acts 2019, No. 910, § 5064.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health".

20-59-244. Unlawful acts — Pasteurized milk — Permit.

It shall be unlawful to label, sell, or offer for sale as pasteurized any milk unless it has been pasteurized in accordance with the provisions of the United States Public Health Service Standard Milk Ordinance and Code under a permit issued by the Secretary of the Department of Health. However, no permit shall be required where plants are operating under permit from a municipality enforcing the United States Public Health Service Standard Milk Ordinance and Code.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914; Acts 2019, No. 910, § 5065.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the first sentence.

20-59-246. Manufacturing milk permit.

(a) Every dairy which produces milk or cream to be used for manufacturing purposes shall be required to procure from the Secretary of the Department of Health a manufacturing milk permit.

(b) Any dairy may obtain a manufacturing milk permit by paying an annual permit fee of twenty-five dollars ($25.00) to the Department of Health and by meeting the minimum requirements of the Rules Pertaining to Milk for Manufacturing Purposes.

(c) Permit fees shall be due by June 30 of each year. Grade "A" dairies with suspended permits and selling milk for manufacturing purposes will be given a ninety-day exemption from the requirement of obtaining

a manufacturing milk permit if they meet the requirements of a manufactured milk producer.

History. Acts 1941, No. 114, § 4; A.S.A 1947 § 82-915; Acts 1987, No. 534, § 1; 2019, No. 315, § 2195; 2019, No. 910, § 5066.

Amendments. The 2019 amendment by No. 315 deleted "and Regulations" following "Rules" in (b).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a).

20-59-247. Disposition of funds.

(a) All fees and fines collected under this subchapter are special revenues and shall be deposited into the State Treasury to the credit of the Public Health Fund to be used exclusively by the Division of Environmental Health Protection of the Department of Health.

(b) Subject to such rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to manufactured milk that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1941, No. 114, § [9], as added by 1987, No. 534, § 2; 1991, No. 328, § 4; 2019, No. 315, § 2196.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

20-59-248. Incidental sales of goat milk, sheep milk, and whole milk that has not been pasteurized not prohibited — Definitions.

(a) For purposes of this section:

(1) "Incidental sales of goat milk, sheep milk, and whole milk that has not been pasteurized" are those sales where the average monthly number of gallons sold does not exceed five hundred gallons (500 gals.);

(2) "Locally produced whole milk products" means whole milk that has been produced on an Arkansas farm; and

(3)(A) "Whole milk" means the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, properly fed and kept, that when offered for sale contains at least three and one-fourth percent (3.25%) of butterfat and eight and one-fourth percent (8.25%) solids not fat.

(B) "Whole milk" does not include lacteal secretion obtained within fifteen (15) days before or five (5) days after calving or a longer period if necessary to render the milk practically colostrum free.

(b) This subchapter does not prohibit incidental sales of raw goat milk, raw sheep milk, and whole milk that has not been pasteurized directly to consumers at the farm where the milk is produced or preclude the advertising of incidental sales of goat milk, sheep milk, and whole milk that has not been pasteurized.

(c) With respect to whole milk that has not been pasteurized, the seller shall:

(1) Post at the point of sale a sign that is no smaller than two feet by four feet (2' x 4') that includes the following information in large, clear text:

(A) The name and address of the farm with seller's contact information; and

(B) The following statement:

"This product, sold for personal use and not for resale, is fresh whole milk that has NOT been pasteurized. Neither this farm nor the milk sold by this farm has been inspected by the State of Arkansas. The consumer assumes all liability for health issues that may result from the consumption of this product."; and

(2) Affix a label to the bottle or package that includes:

(A) The name and address of the farm; and

(B) The following statement:

"This product, sold for personal use and not for resale, is fresh whole milk that has NOT been pasteurized. Neither this farm nor the milk sold by this farm has been inspected by the State of Arkansas. The consumer assumes all liability for health issues that may result from the consumption of this product."

(d) A farmer who sells fresh whole unpasteurized milk shall permit inspection of his or her cows and barns by his or her customers upon request.

History. Acts 1993, No. 816, § 1; 2013, No. 1209, § 1; 2019, No. 846, § 1.

Amendments. The 2019 amendment inserted "sheep milk" in the section heading, (a)(1), and (b); and inserted "raw sheep milk" in (b).

Subchapter 3 — Mellorine

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-59-301. Applicability.

Every person, firm, or corporation producing, manufacturing, processing, freezing, or packaging mellorine or mellorine mix shall comply with the same rules that govern the production and manufacturing of ice cream and other manufactured milk products, as promulgated by the State Board of Health.

History. Acts 1953, No. 416, § 10; A.S.A. 1947, § 82-918.9; Acts 2019, No. 315, § 2197.

Amendments. The 2019 amendment deleted "and regulations" following "rules".

20-59-302. Penalties.

(a) Any person, firm, or corporation that violates any of the provisions of this subchapter or any of the rules issued in connection therewith or any officer, agent, or employee thereof who directs or knowingly permits such a violation or who aids or assists such a violation shall be guilty of a violation and upon conviction shall be subject to a fine of not more than two hundred fifty dollars ($250) and not less than fifty dollars ($50.00).

(b) Each violation shall constitute a separate offense.

History. Acts 1953, No. 416, § 13; A.S.A. 1947, § 82-918.12; Acts 2005, No. 1994, § 134; 2019, No. 315, § 2198.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a).

20-59-303. State Board of Health — Enforcement.

(a) The State Board of Health, through its constituted officers and agents, is authorized and directed to administer and to supervise the enforcement of this subchapter, to prescribe rules to carry out its purpose, to provide for such periodic inspections and investigations as it may deem necessary to disclose violations, to receive and provide for the investigation of complaints and to provide for the institution and prosecution of civil or criminal actions, or both.

(b) The provisions of this subchapter and the rules issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Adulterated or misbranded articles illegally held or otherwise involved in a violation of this subchapter or of the rules shall be subject to seizure and disposition in accordance with an order of court.

(c) However, any aggrieved party shall have the right to apply to the circuit court in the county of his or her residence for a review of any summary action on the part of the board or its agents. For this purpose, service of process upon the Secretary of the Department of Health at any place in this state shall constitute a valid service in the application for review.

History. Acts 1953, No. 416, § 11; A.S.A. 1947, § 82-918.10; Acts 2019, No. 315, § 2199; 2019, No. 910, § 5067.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a) and twice in (b).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (c).

20-59-304. Production requirements generally.

(a) Any person, firm, or corporation that can and does comply with the rules as promulgated by the State Board of Health and upon the payment of the permit fee and the issuance of a permit shall be eligible to produce, manufacture, process, freeze, and package mellorine and mellorine mix.

(b) The plants must have available the necessary equipment to package the product in containers as set out in this subchapter. However, plants may manufacture mellorine mix without owning the necessary equipment to package the product, so long as they sell the mellorine mix to a processing plant which has been issued a permit and has the necessary equipment to package mellorine.

History. Acts 1953, No. 416, § 12; A.S.A. 1947, § 82-918.11; Acts 2019, No. 315, § 2200.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a).

20-59-305. Production permit required.

(a) It shall be unlawful for any person, firm, or corporation to operate a plant producing, manufacturing, processing, freezing, or packaging mellorine or mellorine mix without having first secured a permit signed by the Secretary of the Department of Health and bearing the seal of his or her office. The permit shall be displayed conspicuously at the place of business.

(b) Permits shall be issued for one (1) year and shall be in effect from April 1 through March 31 of each year and shall be cancelled, withdrawn, or suspended by the State Board of Health for failure to comply with any of the provisions of this subchapter after due notice in writing has been given and the licensee has been granted a hearing.

(c) Any licensee whose permit has been cancelled, withdrawn, or suspended as provided in this section shall have the right of appeal from the action of the board to the circuit court of the county of his or her residence.

(d) The secretary shall collect for the permits, and all funds collected by the secretary under the provisions of this subchapter shall be deposited into the State Treasury.

History. Acts 1953, No. 416, §§ 7, 8; 1979, No. 521, § 2; A.S.A. 1947, §§ 82-918.6, 82-918.7; Acts 2019, No. 910, §§ 5068, 5069.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a); and substituted "secretary" for "director" twice in (d).

Subchapter 4 — Grade "A" Milk Program Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-59-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Distributors of Grade 'A' milk and milk products processed by plants outside of Arkansas" means any person who offers for sale or sells to another any Grade "A" milk or milk products in Arkansas;

(2) "Division of Environmental Health Protection" means the Division of Environmental Health Protection of the Department of Health;

(3) "Grade 'A' milk and milk products" means milk and milk products that are in compliance with the Grade "A" milk and milk products control laws and rules of the State of Arkansas;

(4) "Imported raw milk" means any milk not produced under routine inspection of Arkansas and imported into the State of Arkansas;

(5) "Milk hauler" means any person who samples and transports Grade "A" raw milk and raw milk products to Grade "A" milk plants or receiving or transfer stations;

(6) "Milk inspection fee" means the Grade "A" milk and milk products inspection fee;

(7) "Milk Inspection Fees Fund" means the fund in the State Treasury into which the Grade "A" milk and milk products inspection fees are to be deposited;

(8) "Milk plant" means a milk plant in any place, premise, or establishment where Grade "A" milk and milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution;

(9) "Producer" means any person who produces Grade "A" raw milk inspected by the State of Arkansas;

(10) "Producer-distributor" means a producer who also is a distributor; and

(11) "State" means the State of Arkansas.

History. Acts 1981, No. 587, § 1; A.S.A. 1947, § 82-4006; Acts 2019, No. 315, § 2201.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (3).

20-59-404. Inspection fees.

(a) In order to make the Grade "A" Milk and Milk Products Inspection and Regulation Program self-supporting, the Accounting Division of the Department of Health shall collect on a monthly basis unless otherwise stated the following Grade "A" milk and milk products inspection fees:

(1) Producers shall pay $.030 per one hundred pounds (100 lbs.) of Grade "A" milk inspected by the state;

(2) Importers of raw Grade "A" milk produced and inspected in another state and imported into Arkansas as raw Grade "A" milk shall pay an inspection fee of ten dollars ($10.00) for each sample analyzed by the laboratory of the Department of Health;

(3) Milk plants shall pay $.030 per one hundred pounds (100 lbs.) of Grade "A" milk processed or distributed;

(4) Producer-distributors shall pay $.065 per one hundred pounds (100 lbs.) of Grade "A" milk produced or sold;

(5) Milk haulers who sample and transport Grade "A" milk in the state shall pay an annual permit fee of ten dollars ($10.00). The fee shall be due January 1 of each year;

(6) Distributors of Grade "A" milk processed by plants outside of Arkansas and sold in the state shall pay $.030 per one hundred pounds (100 lbs.) or a monthly minimum fee of two hundred dollars ($200) per month plus ten dollars ($10.00) for each sample analyzed by the laboratory of the department. The larger of the two sums shall be paid during the following month; and

(7) Single service plants shall pay an annual permit fee of two hundred dollars ($200). This fee shall not be applied to plants paying a milk inspection fee. The fee shall be due January 1 of each year.

(b) If any person fails, neglects, or refuses to pay the above fee and is delinquent for a period of thirty (30) days, the Secretary of the Department of Health is directed and empowered to prohibit the person from distributing, hauling, selling, or otherwise handling Grade "A" milk or milk products in the state and shall suspend his or her permit and withdraw all inspection service from the establishment until fees are paid in full.

(c)(1) The Grade "A" milk and milk products inspection fees shall not be greater than the actual cost of the inspections.

(2) If there is a balance in the Milk Inspection Fees Fund equivalent to ninety-day maintenance of the program, one (1) month of the milk inspection fees shall be forgiven.

(d) The fees set forth in subsection (a) of this section may be increased by up to one half cent (½¢) beginning July 1, 1992, upon

certification by the Chief Fiscal Officer of the State that the expenditures of the program exceed the amount of fees collected.

History. Acts 1981, No. 587, §§ 3, 4; A.S.A. 1947, §§ 82-4008, 82-4009; Acts 1987, No. 634, § 1; 1991, No. 191, § 1; 2019, No. 910, § 5070; 2019, No. 1091, § 6.

Amendments. The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b).

The 2019 amendment by No. 1091 deleted the second sentence of (d).

20-59-407. [Repealed.]

Publisher's Notes. This section, concerning reports to the Grade "A" Milk Program Advisory Committee, was repealed by Acts 2019, No. 1091, § 7, effective July 24, 2019. The section was derived from Acts 1981, No. 587, § 9; A.S.A. 1947, § 82-4014.

Subchapter 5 — Grade "A" Milk Program Advisory Committee

SECTION.
20-59-501 — 20-59-506. [Repealed.]

20-59-501 — 20-59-506. [Repealed.]

A.C.R.C. Notes. The repeal of § 20-59-503 by Acts 2019, No. 1091, § 8, superseded the amendment of § 20-59-503 by Acts 2019, No. 315, § 2202. The amendment by Act 315 deleted "and regulations" following "rules" in subsection (a).

The repeal of § 20-59-506 by Acts 2019, No. 1091, § 8, superseded the amendment of § 20-59-506 by Acts 2019, No. 910, § 5071. The amendment by Act 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in subdivision (b)(2).

Publisher's Notes. This subchapter, concerning the Grade "A" Milk Program Advisory Committee, was repealed by Acts 2019, No. 1091, § 8, effective July 24, 2019. The subchapter was derived from the following sources:

20-59-501. Acts 1981, No. 506, § 1; A.S.A. 1947, § 82-4016.

20-59-502. Acts 1981, No. 506, § 2; A.S.A. 1947, § 82-4017.

20-59-503. Acts 1981, No. 506, §§ 3, 6-10; 1983, No. 310, § 1; A.S.A. 1947, §§ 82-4018, 82-4021 — 82-4025; Acts 1997, No. 250, § 201; 2019, No. 315, § 2202.

20-59-504. Acts 1981, No. 506, §§ 11-14, 16, 17; A.S.A. 1947, §§ 82-4026 — 82-4029, 82-4031, 82-4032.

20-59-505. Acts 1981, No. 506, §§ 15, 18, 19; A.S.A. 1947, §§ 82-4030, 82-4033, 82-4034.

20-59-506. Acts 1981, No. 506, §§ 4, 5; A.S.A. 1947, §§ 82-4019, 82-4020; Acts 2019, No. 910, § 5071.

Subchapter 7 — Milk Laboratory Antibiotic Drug Testing Program

SECTION.
20-59-703. Rules.
20-59-705. Disposition of funds.

20-59-703. Rules.

The Department of Health shall have the authority to promulgate such rules as necessary to administer this subchapter.

History. Acts 1993, No. 701, § 2; 2019, No. 315, § 2203.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and following "rules" in the section.

20-59-705. Disposition of funds.

(a) All fees and fines collected under this subchapter are hereby declared special revenues and shall be deposited into the State Treasury to the credit of the Public Health Fund. All fees and fines collected under this subchapter are to be spent solely in support of the Milk Laboratory Antibiotic Drug Testing Program.

(b) Subject to such rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to the program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for the expenditure for the same purpose for any following fiscal year.

History. Acts 1993, No. 701, § 4; 2019, No. 315, § 2204.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

CHAPTER 60

MEAT AND MEAT PRODUCTS

SUBCHAPTER.

2. Arkansas Meat and Meat Products Inspection Act.
3. Meat and Meat Products Certification Act.

Subchapter 2 — Arkansas Meat and Meat Products Inspection Act

SECTION.

20-60-203. Definitions.
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20-60-212. Cost.
20-60-213. Labeling and marking.
20-60-214. Prohibited acts.
20-60-215. Records.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the

fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-60-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Adulterated" shall apply to any livestock carcass, part thereof, or meat food product under one (1) or more of the following circumstances:

(A) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the article shall not be considered adulterated under this subdivision (1)(A) if the quantity of the substance does not ordinarily render it injurious to health;

(B) If it bears or contains any added poisonous or added deleterious substance, unless the substance is permitted in its production or unavoidable under good manufacturing practices as may be determined by rules prescribed by the Secretary of the Department of Health. However, any quantity of added substances exceeding the limit so fixed shall also be deemed to constitute adulteration;

(C) If any substance has been substituted, wholly or in part, therefor;

(D) If damage or inferiority has been concealed in any manner;

(E) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(F) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

(2) "Advertisement" means all representations disseminated in any manner or by any means other than by labeling for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of meat or meat products;

(3) "Board" means the State Board of Health;

(4) "Container" and "package" include any box, can, tin, cloth, plastic, or any other receptacle, wrapper, or cover;

(5) "Director" means the Director of the Department of Health of this state, or any person authorized to act in his or her stead;

(6) "Federal Meat Inspection Act" means the Act of Congress approved March 4, 1907, as amended and extended, and the imported meat provisions of subsections 306(b) and (c) of the Tariff Act of 1930, as amended;

(7) "Immediate container" means any consumer package or any other container in which an article, not consumer packaged, is packed;

(8) "Inspection service" means the official governmental service within the Department of Health of this state designated by the director as having the responsibility for carrying out the provisions of this subchapter;

(9) "Inspector" means an employee or official of this state authorized by the director to inspect livestock or carcasses or parts thereof, or meat food products under the authority of this subchapter;

(10) "Intrastate commerce" means commerce within this state;

(11) "Label" means any written, printed, or graphic material upon the shipping container, if any, or upon the immediate container including, but not limited to, any individual consumer package of an article or accompanying the article;

(12) "Livestock" means cattle, sheep, swine, goats, or horses;

(13) "Meat" means any edible part of the carcass of any livestock;

(14) "Meat food product" means any article of food, or any article intended for or capable of use as human food, which is derived or prepared, in whole or in part, from any portion of any livestock, unless exempted by the director upon his or her determination that the article:

(A) Contains only a minimal amount of meat and is not represented as a meat food product; or

(B) Is for medicinal purposes and is advertised only to the medical profession;

(15) "Official establishment" means any establishment in this state as determined by the director at which inspection of the slaughter of livestock or the processing of livestock or carcasses or parts thereof, or meat food products is maintained under the authority of this subchapter. However, the term "official establishment" as used in this subchapter shall not be construed to mean livestock or meat sold by the producer thereof on his, her, or its own farm or ranch on an occasional basis directly to the consumer and user thereof;

(16) "Official inspection mark" means any symbol, formulated pursuant to rules prescribed by the secretary, stating that an article was inspected and passed;

(17) "Person" means any individual, partnership, corporation, association, or any other business entity;

(18) "Shipping container" means any container used or intended for use in packaging the article packed in an immediate container;

(19) "Unwholesome" means:

(A) Unsound, injurious to health, containing any biological residue not permitted by rules prescribed by the secretary, or otherwise rendered unfit for human food;

(B) Consisting in whole or in part of any filthy, putrid, or decomposed substance;

(C) Processed, prepared, packed, or held under unsanitary conditions whereby any livestock carcass or part thereof or any meat food product may have become contaminated with filth or may have been rendered injurious to health;

(D) Produced in whole or in part from livestock which has died otherwise than by slaughter; or

(E) Packaged in a container composed of any poisonous or deleterious substance which may render the contents injurious to health; and

(20) "Wholesome" means sound, healthful, clean, and otherwise fit for human food.

History. Acts 1967, No. 320, § 3; A.S.A. 1947, § 82-2003; Acts 2019, No. 315, §§ 2205-2207.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (1)(B), (16), and (19)(A).

20-60-204. Exceptions.

(a)(1) The Secretary of the Department of Health shall, by rule and under such conditions as to labeling, sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this subchapter:

(A) Livestock producers with respect to livestock carcasses and parts thereof, and meat food products, processed by them from livestock of their own raising on their own farms and used by them for personal or private consumption, but in no instance where the product is to be offered or used for public consumption;

(B) Any person engaged in slaughtering livestock or processing livestock carcasses or parts thereof or meat food products for intrastate commerce and the articles so processed by the person, whenever the secretary determines that it would be impracticable to provide inspection and that the exemption will aid in the effective administration of this subchapter;

(C) Persons slaughtering livestock or otherwise processing or handling livestock carcasses or parts thereof, or meat food products, which have been or are to be processed as required by recognized religious dietary laws, to the extent that the secretary determines is necessary to avoid conflict with the requirements while still effectuating the purposes of this subchapter; and

(D) Any establishment engaged in slaughtering livestock or processing livestock carcasses or parts thereof, or meat food products for intrastate commerce, and the articles so processed by the establishment when the establishment is subject to inspection under a city ordinance which sets standards in conformity with the minimum standards determined by the secretary.

(2) The secretary may, by order, suspend or terminate any exemption under this section with respect to any person whenever he or she finds that the action will aid in effectuating the purposes of this subchapter.

(b) This subchapter shall not apply to any act or transaction subject to regulation under the Federal Meat Inspection Act, where the standards required under the federal act are in conformity with the minimum standards determined by the secretary.

(c)(1) This subchapter shall not apply to the custom slaughtering by any person, firm, or corporation of cattle, sheep, swine, or goats delivered by the owner thereof for the slaughter and the preparation by the slaughterer and transportation in commerce of the carcass parts thereof, meat, and food products of the animals, exclusively for use in the household of the owner by him or her and members of his or her household and his or her nonpaying guests and employees.

(2) However, the custom slaughterer or processor must not engage in the business of buying or selling any carcass, parts thereof, meat, or food products of any cattle, sheep, swine, goats, or equines capable of use as human food except those products which have been inspected and passed for wholesomeness under continuous state or federal board of agriculture inspection and are properly marked or labeled with the official inspection legends of the appropriate agency.

(3) To maintain entitlement for exemption:

(A) The custom establishment must comply with the rules which the secretary is authorized to promulgate to assure that any carcasses, parts thereof, meat, or meat food products prepared or any containers or packages containing uninspected, exempted custom products are separated at all times from inspected carcasses, parts thereof, or meat, or meat food products prepared for sale;

(B) All uninspected products prepared on an exempted custom basis must be plainly marked "Not For Sale" immediately after being prepared and kept so identified until delivered to the owner;

(C) The establishment conducting the exempted custom operation must be maintained and operated in a sanitary manner; and

(D) The products so prepared must not be adulterated, mislabeled, or misbranded according to the provisions of this subchapter.

(d) This subchapter shall not affect any existing right of cities or towns to levy occupation taxes or license fees against establishments covered in this subchapter.

History. Acts 1967, No. 320, §§ 10, 15; 1969, No. 351, § 1; 1973, No. 311, § 1; A.S.A. 1947, §§ 82-2010, 82-2015; Acts 2019, No. 315, §§ 2208, 2209; 2019, No. 910, §§ 5072, 5073.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in the introductory language of (a)(1); and substituted "rules" for "regulations" in (c)(3)(A).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the introductory language of (a)(1); and substituted "secretary" for "director" throughout the section.

20-60-205. Penalties.

(a) Any person who violates the provisions of this subchapter shall upon conviction be subject to imprisonment for not more than six (6) months or a fine of not less than one hundred dollars ($100) nor more than three thousand dollars ($3,000), or both imprisonment and fine:

(1) If the violation is committed after one (1) conviction of the person under this section, the person shall be subject to imprisonment for not more than one (1) year or a fine of not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), or both imprisonment and fine; or

(2) If the violation is committed after two (2) or more convictions of the person under this section have become final, the person shall be subject to imprisonment for not more than two (2) years or a fine of not less than three thousand dollars ($3,000) nor more than ten thousand dollars ($10,000), or both imprisonment and fine.

(b) When construing or enforcing the provisions of this subchapter, the act, omission, or failure of any person acting for or employed by an individual, partnership, corporation, association, or other business unit within the scope of his or her employment or office shall in every case be deemed the act, omission, or failure of the individual, partnership, corporation, association, or other business unit, as well as of the person.

(c) No carrier or warehouser shall be subject to the penalties of this subchapter other than the penalties for violation of § 20-60-215 by reason of his or her receipt, carriage, holding, or delivery in the usual course of business as a carrier or warehouser of livestock carcasses, parts thereof, or meat food products owned by another person unless the carrier or warehouser has knowledge or is in possession of facts which would cause a reasonable person to believe that the articles were not inspected or marked in accordance with the provisions of this subchapter or were not otherwise in compliance with this subchapter.

(d) Nothing in this subchapter shall be construed as requiring the Secretary of the Department of Health to report violations of this subchapter for criminal prosecution whenever the secretary believes that the public interest will be adequately served and compliance with this subchapter obtained by a suitable written notice of warning.

History. Acts 1967, No. 320, §§ 11, 12; A.S.A. 1947, §§ 82-2011, 82-2012; Acts 2019, No. 910, § 5074.

Amendments. The 2019 amendment, in (d), substituted "Secretary of the Department of Health" for "Director of the Department of Health" and "secretary" for "director".

20-60-206. Secretary of the Department of Health — Powers and duties.

(a)(1) The Secretary of the Department of Health shall promulgate such rules and appoint such veterinarians and other qualified personnel as are necessary to carry out the purposes or provisions of this subchapter. The rules shall be in conformity with the rules and regulations under the Federal Meat Inspection Act as now in effect and with subsequent amendments thereof unless they are considered by the secretary as not to be in accord with the objectives of this subchapter.

(2) Notice of proposed rules shall be given all establishments licensed under this subchapter. A hearing shall be called by the secretary at which proponents and opponents of the proposed rules shall be given the opportunity to present arguments supporting their positions. The time, place, and procedure for the hearing shall be determined by the secretary. No proposed rules shall become effective until after the hearing.

(b) The secretary may cooperate with the United States Government in carrying out the provisions of this subchapter and the Federal Meat Inspection Act.

History. Acts 1967, No. 320, §§ 14, 15; A.S.A. 1947, §§ 82-2014, 82-2015; Acts 2019, No. 315, § 2210; 2019, No. 910, § 5075.

Amendments. The 2019 amendment by No. 315, in (a)(1), deleted "and regulations" following "rules" in the first sentence and following "The rules" in the second sentence; and deleted "and regulations" following "rules" throughout (a)(2).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the section heading and in (a)(1); and substituted "secretary" for "director" throughout the section.

20-60-208. Application for license or exemption.

(a) Applications for inspection or exemption shall be made on forms furnished by the Secretary of the Department of Health.

(b) A license shall be good for one (1) year, or any quarter thereof, expiring on December 31 of the year it is issued.

(c) Applicants for licenses shall be required to obtain a license for each establishment owned by them.

(d) Before any license is issued, an inspection shall be made by the secretary to determine the acceptability of the establishment to do business as desired by the applicant in his or her application for license or exemption.

History. Acts 1967, No. 320, § 8; A.S.A. 1947, § 82-2008; Acts 2019, No. 910, §§ 5076, 5077.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a); and substituted "secretary" for "director" in (d).

20-60-209. Inspection and sanitary practices required.

(a) Each official establishment at which livestock are slaughtered or livestock carcasses or parts thereof or meat food products are processed for intrastate commerce shall have the premises, facilities, and equipment inspected and shall be operated in accordance with such sanitary practices as are required by rules prescribed by the Secretary of the Department of Health for the purpose of preventing the entry into and movement in commerce of carcasses, parts thereof, and meat food products which are unwholesome or adulterated.

(b) No livestock carcasses or parts thereof, or meat food product, shall be admitted into any official establishment unless they have been prepared only under inspection pursuant to this subchapter or the Federal Meat Inspection Act or their admission is permitted by rules prescribed by the secretary under this subchapter.

(c) The secretary shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.

History. Acts 1967, No. 320, § 5; A.S.A. 1947, § 82-2005; Acts 2019, No. 315, § 2211; 2019, No. 910, § 5078.

Amendments. The 2019 amendment by No. 315 deleted "or regulations" following "rules" in (a).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a); and substituted "secretary" for "director" in (b) and (c).

20-60-210. Inspection procedures.

(a) For the purpose of preventing the entry into or movement in intrastate commerce of any livestock carcass, part thereof, or meat food product which is unwholesome or adulterated and is intended for or capable of use as human food, the Secretary of the Department of Health shall, where and to the extent considered by him or her necessary, cause to be made by inspectors antemortem inspection of livestock in any official establishment where livestock are slaughtered for such commerce.

(b) For the purpose stated in subsection (a) of this section, the secretary, whenever slaughtering or other processing operations are being conducted, shall cause to be made by inspectors postmortem inspection of the carcasses and parts thereof of each animal slaughtered in any official establishment. He or she shall cause to be made by inspectors an inspection of all meat food products processed in any official establishment in which meat food products are processed for intrastate commerce.

(c) The secretary shall also cause, at any time, such quarantine, segregation, and reinspection of livestock, livestock carcasses, and parts thereof, and meat food products in official establishments as he or she deems necessary to effectuate the purposes of this subchapter.

(d)(1) All livestock carcasses and parts thereof, and meat food products, found by an inspector to be unwholesome or adulterated in any official establishment shall be condemned and shall, if no appeal is taken from the determination of condemnation, be destroyed for human food purposes under the supervision of an inspector.

(2) However, articles, which may be made wholesome and unadulterated by reprocessing need not be condemned and destroyed if reprocessed under the supervision of an inspector and thereafter found to be wholesome and unadulterated.

(3) If any appeal is taken from the determination, the articles shall be appropriately marked and segregated pending completion of an appeal inspection. If the determination of condemnation is sustained, the articles shall be destroyed for human food purposes under the supervision of an inspector.

History. Acts 1967, No. 320, § 4; A.S.A. 1947, § 82-2004; Acts 2019, No. 910, § 5079.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a); and substituted "secretary" for "director" in (b) and (c).

20-60-211. Withdrawal and denial of inspection.

(a) The Secretary of the Department of Health may withdraw or otherwise deny inspection under this subchapter with respect to any establishment for such period as he or she deems necessary to effectuate the purposes of this subchapter for any violation of the subchapter or any requirements thereunder by the operation of the establishment.

(b)(1) However, before a withdrawal or denial of inspection is ordered, the secretary shall give the affected establishment an opportunity for a hearing at which the establishment may present evidence that it has not violated the subchapter or any requirements thereunder.

(2) The hearing shall be held after notice to the establishment in such manner as the secretary shall determine by his or her rules.

History. Acts 1967, No. 320, § 13; A.S.A. 1947, § 82-2013; Acts 2019, No. 315, § 2212; 2019, No. 910, § 5080.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(2).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a); and substituted "secretary" for "director" in (b)(1) and (b)(2).

20-60-212. Cost.

(a) The cost of inspection rendered under this subchapter shall be borne by this state. The cost of overtime and holiday work performed in establishments subject to the provisions of this subchapter at such rates as the Secretary of the Department of Health may determine shall be borne and paid by the establishments. An inspector performing overtime and holiday work shall be treated as though he or she were on compensatory leave at such compensation as shall equal the rates set by the secretary.

(b) There is authorized to be appropriated such sums as are necessary to carry out the provisions of this subchapter.

History. Acts 1967, No. 320, §§ 16, 17; A.S.A. 1947, §§ 82-2016, 82-2017; Acts 2019, No. 910, § 5081.

Amendments. The 2019 amendment, in (a), substituted "Secretary of the Department of Health" for "Director of the Department of Health" and "secretary" for "director".

20-60-213. Labeling and marking.

(a)(1) Each shipping container of any meat or meat food product, inspected under the authority of this subchapter and found to be wholesome and not adulterated, shall at the time the product leaves the official establishment bear, in distinctly legible form, the official inspection mark and the approved plant number of the official establishment in which the contents were processed.

(2) Each immediate container of any meat or meat food product, inspected under the authority of this subchapter and found to be wholesome and not adulterated, shall at the time the product leaves the official establishment bear, in addition to the official inspection mark, in distinctly legible form, the name of the product, a statement of ingredients if fabricated from two (2) or more ingredients, including a declaration as to artificial flavors, colors, or preservatives, if any, the net weight or other appropriate measure of the contents, the name and address of the processor, and the approved plant number of the official establishment in which the contents were processed. The name and address of the distributor may be used in lieu of the name and address

of the processor if the approved plant number is used to identify the official establishment in which the article was prepared and packed.

(3) Each livestock carcass and each primal part of a carcass shall bear the official inspection mark and approved plant number of the establishment when it leaves the official establishment.

(4) The Secretary of the Department of Health may by rule require additional marks or label information to appear on livestock carcasses or parts thereof or meat food products when they leave the official establishments or at the time of their transportation or sale in this state. He or she may permit reasonable variations and grant exemptions from the marking and labeling requirements of this section in any number not in conflict with the purposes of this subchapter.

(5) Marks and labels required under this section shall be applied only by or under the supervision of an inspector.

(b) The use of any advertising or any written, printed, or graphic matter upon or accompanying any livestock carcass, or part thereof, or meat food product inspected or required to be inspected pursuant to the provisions of this subchapter, or the container thereof which is false or misleading in any particular, is prohibited.

(c)(1) No livestock carcasses or parts thereof or meat food products inspected or required to be inspected pursuant to the provisions of this subchapter shall be sold or offered for sale by any person, firm, or corporation under any false or deceptive name, but established trade names which are usual to the articles and which are not false or deceptive and which are approved by the secretary are permitted.

(2) If the secretary has reason to believe that any advertising or any label in use or prepared for use is false or misleading in any particular, he or she may direct that the use of the advertising or label be withheld unless it is modified in such manner as he or she may prescribe so that it will not be false or misleading.

(3) If the person using or proposing to use any advertising or the label does not accept the determination of the secretary, he or she may request a hearing, but the use of the advertising or the label shall, if the secretary so directs, be withheld pending hearing and final determination by the secretary.

(4) Any determination by the secretary shall be conclusive unless within thirty (30) days after the receipt of notice of the final determination, the person adversely affected thereby appeals to the Pulaski County Circuit Court.

History. Acts 1967, No. 320, § 6; A.S.A. 1947, § 82-2006; Acts 2019, No. 315, § 2213; 2019, No. 910, §§ 5082, 5083.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "rules or regulations" in the first sentence of (a)(4).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a)(4); and substituted "secretary" for "director" throughout (c).

20-60-214. Prohibited acts.

The following acts or the causing thereof within this state are prohibited:

(1) The processing for, or the sale or offering for sale, transportation, or delivery or receiving for transportation, in intrastate commerce, of any livestock carcass or part thereof, or meat food product unless the article has been inspected for wholesomeness and unless the article and its shipping container and immediate container, if any, are marked in accordance with the requirements under this subchapter or the Federal Meat Inspection Act;

(2) The sale or other disposition for human food of any livestock carcass or part thereof or meat food product which has been inspected and declared to be unwholesome or adulterated under this subchapter;

(3) Falsely making or issuing, altering, forging, simulating, counterfeiting, or using without proper authority any official inspection certificate, memorandum, mark, or other identification, or device for making a mark or identification, used in connection with inspection under this subchapter; or causing, procuring, aiding, assisting in, or being a party to false making, issuing, altering, forging, simulating, counterfeiting, or unauthorized use; or knowingly possessing, without promptly notifying the Secretary of the Department of Health or his or her representative, uttering, publishing, or using as true, or causing to be uttered, published, or used as true, any falsely made or issued, altered, forged, simulated, or counterfeited official inspection certificate, memorandum, mark, or other identification, or device for making a mark or identification; or representing that any article has been officially inspected under the authority of this subchapter when the article has in fact not been so inspected; or knowingly making any false representation in any certificate prescribed by the secretary in rules under this subchapter or any form resembling the certificate;

(4) Using in intrastate commerce any false or misleading advertising with respect to meat or meat products;

(5) Using in intrastate commerce any false or misleading label on any livestock carcass or part thereof, or meat food product;

(6) The use of any container bearing an official inspection mark except for the article in the original form in which it was inspected and covered by the mark unless the mark is removed, obliterated, or otherwise destroyed;

(7) The refusal to permit access by any authorized representative of the secretary at all reasonable times to the premises of an establishment in this state at which livestock are slaughtered or the carcasses or parts thereof or meat food products are processed for intrastate commerce upon presentation of appropriate credentials;

(8) The refusal to permit access to and the copying of any record as authorized by § 20-60-215;

(9) The using by any person to his or her own advantage, or revealing, other than to the authorized representatives of any govern-

ment agency in their official capacity, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this subchapter, concerning any matter which as a trade secret is entitled to protection;

(10) Delivering, receiving, transporting, selling, or offering for sale or transportation in intrastate commerce for human consumption any livestock carcass or part thereof or meat food product which has been processed in violation of any requirements under this subchapter except as may be authorized by and pursuant to rules prescribed by the secretary;

(11) Delivering, receiving, transporting, selling, or offering for sale or transportation in intrastate commerce any livestock carcass, or part thereof, or meat food product which is exempted under § 20-60-204, is unwholesome or adulterated, and is intended for human consumption; and

(12) Applying to any livestock carcass, or part thereof, or meat food product, or any container thereof, any official inspection mark or label required under this subchapter except by or under the supervision of an inspector.

History. Acts 1967, No. 320, § 7; A.S.A. 1947, § 82-2007; Acts 2019, No. 315, §§ 2214, 2215; 2019, No. 910, §§ 5084-5086.

Amendments. The 2019 amendment by No. 315 deleted "or regulations" following "rules" in (3); and deleted "and regulations" following "rules" in (10).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (3); and substituted "secretary" for "director" throughout the section.

20-60-215. Records.

(a) For the purpose of enforcing the provisions of this subchapter, persons engaged in this state in the business of processing for intrastate commerce or transporting, shipping, or receiving in commerce livestock slaughtered for human consumption or meat or meat food products, or holding articles so received, shall maintain the records as the Secretary of the Department of Health by rule may require, showing, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, or disposition of the articles and shall, upon the request of an authorized representative of the secretary, permit him or her at reasonable times to have access to and to copy all the records.

(b) Any record required to be maintained by this section shall be maintained for a period of two (2) years after the transaction which is subject to the record has taken place.

History. Acts 1967, No. 320, § 9; A.S.A. 1947, § 82-2009; Acts 2019, No. 315, § 2216; 2019, No. 910, § 5087.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" and "secretary" for "director" in (a).

Subchapter 3 — Meat and Meat Products Certification Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-60-303. Regulatory authority of the Secretary of the Department of Health.

The Secretary of the Department of Health shall promulgate such rules as are necessary to carry out the purposes and provisions of this subchapter.

History. Acts 1971, No. 468, § 5; A.S.A. 1947, § 82-2022; Acts 2019, No. 315, § 2217; 2019, No. 910, § 5088.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules".

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the section heading and in the section.

20-60-306. Acceptance service — Cost.

The cost of providing the acceptance service and ensuing certification shall be borne and paid by the seller, slaughterer or processor, or vendor or merchant requesting the service at such rate as the Secretary of the Department of Health may determine as being necessary to defer the cost of this service.

History. Acts 1971, No. 468, § 6; A.S.A. 1947, § 82-2023; Acts 2019, No. 910, § 5089.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health".

CHAPTER 61

FISH AND SEAFOOD

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

20-61-101. Foreign fish.

(a) No fresh, cold storage, or frozen fish produced outside this state or in any foreign country and imported into the United States shall be sold or offered for sale in this state by any food establishment unless:

(1) The package or container containing the food bears a statement in writing naming thereon the country of origin, the date of packaging, and the common name of all fish contained therein; and

(2) The fish has been packaged and processed under sanitary conditions equal to the standards required by the laws and rules of this state for fish processing plants.

(b)(1) Outlets serving cooked, fresh, cold storage, or frozen fish at retail which display on the menu or in some conspicuous public place in the outlet the identity of the country of origin and the common name of all fish as reflected on the menu or sold in the outlet shall be deemed as having satisfied the requirements of subdivision (a)(1) of this section.

(2) All suppliers of any fresh, cold storage, or frozen fish shall furnish to the distributor or retailer to which the products are sold in this state an affidavit that all products are properly labeled, as required in this section, with respect to the country of origin of and the contents of any foreign imported fish. This affidavit shall include a certificate that the supplier has caused each of the products to be properly labeled in conformance with the requirements of this section.

(3)(A) The Director of the Arkansas Bureau of Standards and enforcement personnel of the bureau are authorized to enforce the requirements of subsection (a) and subdivisions (b)(1) and (2) of this section.

(B) The director is authorized to promulgate rules necessary to enforce subsection (a) and subdivisions (b)(1) and (2) of this section.

(4) In addition, all suppliers of any fresh, cold storage, or frozen fish shall furnish to any distributor or retailer to which the product is sold in this state proof that the fish has been packaged and processed under sanitary conditions equal to the sanitary conditions required of fish processing plants in this state. The proof may be upon certification by the Department of Health or certification by the United States Food and Drug Administration or other appropriate federal agency that the

processing plant in which the fish was packaged or processed meets sanitary conditions within at least the minimum requirements of the laws and rules of this state for fish processing plants, or proof may be upon the certification of the supplier that the fish packaged or processed outside this state or in a foreign country was packaged or processed in a fish processing plant that meets at least the minimum requirements of the laws and rules of this state for sanitary conditions for fish processing plants.

(c) Any supplier of fresh, cold storage, or frozen fish or any distributor or retailer who sells any fish in this state in violation of the provisions of this section shall each be individually and severally subject to the civil penalties as provided in subsection (d) of this section.

(d)(1) A violator of this section shall be assessed by the State Plant Board a civil penalty of:

(A) Not less than one hundred dollars ($100) nor more than three hundred dollars ($300) for a first violation;

(B) Not less than four hundred dollars ($400) nor more than six hundred dollars ($600) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than seven hundred dollars ($700) nor more than one thousand dollars ($1,000) for a third violation within three (3) years after the date of the first violation.

(2) For a violation to be considered as a second or subsequent offense, it must be a repeat violation of a requirement enumerated in subsection (a) and subdivisions (b)(1) and (2) of this section.

(3)(A) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(B) The board is authorized to conduct the hearing after giving appropriate notice, and its decision shall be subject to judicial review.

(4)(A) If a violator has exhausted the administrative appeals and the civil penalty is upheld, the violator shall pay the civil penalty within twenty (20) calendar days after the date of the final decision.

(B) If the violator fails to pay the penalty, a civil action may be brought by the board in any court of competent jurisdiction to recover the penalty.

(C) Any civil penalty collected under this section shall be transmitted to the State Plant Board Fund.

(e) The provisions of this section shall not be applicable to shellfish.

History. Acts 1971, No. 367, §§ 1-3; 1973, No. 519, § 1; A.S.A. 1947, §§ 82-982 — 82-984; Acts 2003, No. 1024, § 1; 2019, No. 315, §§ 2218-2220.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (a)(2) and twice in the second sentence of (b)(4); and deleted "and regulations" following "rules" in (b)(3)(B).

Subchapter 2 — Arkansas Catfish Marketing Act of 1975

20-61-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Capable of use as human food" shall mean and shall apply to any catfish, catfish-like species, or part or product of catfish or a catfish-like species unless it is denatured or otherwise identified as required by rules prescribed by the Director of the Arkansas Bureau of Standards to deter its use as human food or unless it is naturally inedible by humans;

(2) "Catfish" means any species of the scientific family Ictaluridae;

(3) "Catfish-like" means any species of the scientific genus Pangasius, family Claridae, or family Siluridae;

(4) "Direct retail sale" means the sale of catfish or catfish-like products individually or in small quantities directly to the consumer;

(5) "Director" means the Director of the Arkansas Bureau of Standards;

(6) "Distributor" means any person offering for sale, exchange, or barter any catfish or catfish-like product destined for direct retail sale in Arkansas;

(7) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a catfish or catfish-like product is offered for direct retail sale;

(8) "Labeling" means all labels and other written, printed, or graphic matter upon a catfish or catfish-like product, or any of its containers or wrappers, offered for direct retail sale;

(9) "Pay pond" means a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit;

(10) "Person" shall include any individual, partnership, corporation, and association or other legal entity;

(11) "Processor" means any person engaged in handling, storing, preparing, manufacturing, packing, or holding catfish or catfish-like products;

(12) "Producer" means any person engaged in the business of harvesting catfish or catfish-like species, by any method, intended for direct retail sale;

(13) "Product" means any catfish or catfish-like product capable of use as human food which is made wholly or in part from any catfish, catfish-like species, or portion of catfish or catfish-like species, except products which contain catfish or catfish-like species only in small proportions or which in the judgment of the director historically have not been considered by consumers as products of the commercial catfish industry and which are exempted from definition as a catfish or catfish-like product by the director under such conditions as he or she

may prescribe to assure that the catfish, catfish-like species, or portions of catfish or catfish-like species contained therein are not adulterated and that the products are not represented as catfish or catfish-like products;

(14) "Product name" means the name of the catfish or catfish-like item intended for retail sale which identifies it as to kind, class, or specific use; and

(15) "Retailer" means any person offering for sale catfish or catfish-like products to individual consumers and representing the last sale before human consumption.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 3; A.S.A. 1947, § 82-989; reen. Acts 1987, No. 1005, § 3; 2003, No. 1024, §§ 2, 3; 2015, No. 1191, § 1; 2019, No. 315, § 2221.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (1).

20-61-203. Penalties — Injunction.

(a)(1)(A) Any person who violates any provision of this subchapter for which no civil penalty is provided by this subchapter shall upon conviction be guilty of a violation and subject to a fine of not more than five hundred dollars ($500).

(B) However, no person shall be subject to penalties under this section for receiving for transportation any article in violation of this subchapter if the receipt was made in good faith unless the person refuses to furnish on request of a representative of the Director of the Arkansas Bureau of Standards the name and address of the person from whom he or she received the article and copies of all documents, if there are any, pertaining to the delivery of the article to him or her.

(2) All distributors, processors, wholesalers, or retailers who are distributing or selling species of fish as catfish or catfish-like that are not within the definition of "catfish" or "catfish-like" under § 20-61-202 shall be in violation of this subchapter and shall be assessed a civil penalty of:

(A) Not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for a first violation;

(B) Not less than eight hundred dollars ($800) nor more than two thousand dollars ($2,000) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than one thousand five hundred dollars ($1,500) nor more than two thousand five hundred dollars ($2,500) for a third violation within three (3) years after the date of the first violation.

(3) For a violation to be considered as a second or subsequent violation, it must be a repeat of the violation in subdivision (a)(2) of this section.

(4)(A) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(B) The State Plant Board is authorized to conduct the hearing after giving appropriate notice, and its decision shall be subject to judicial review.

(5)(A) If a violator has exhausted the administrative appeals and the civil penalty is upheld, the violator shall pay the civil penalty within twenty (20) calendar days after the date of the final decision.

(B) If the violator fails to pay the penalty, a civil action may be brought by the board in any court of competent jurisdiction to recover the penalty.

(C) Any civil penalty collected under this section shall be transmitted to the State Plant Board Fund.

(b) Nothing in this subchapter shall be construed as requiring the director to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c)(1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the distributor or other affected person to present his or her views to the director.

(d)(1) The director is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule promulgated under this subchapter, notwithstanding the existence of other remedies at law.

(2) The injunction shall be issued without bond.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 7; A.S.A. 1947, § 82-993; reen. Acts 1987, No. 1005, § 7; 2003, No. 1024, § 4; 2005, No. 1994, § 136; 2015, No. 1191, § 2; 2019, No. 315, § 2222.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (d)(1).

20-61-205. Rules.

(a) The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules as may be necessary for the efficient enforcement of this subchapter.

(b)(1) Before the issuance, amendment, or repeal of any rule authorized by this subchapter, the director shall publish the proposed rule, amendment, or notice to repeal an existing rule in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time.

(2) After consideration of all views presented by interested persons, the director shall take appropriate action to issue the proposed rules or to amend or repeal an existing rule.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 6; A.S.A. 1947, § 82-992; reen. Acts 1987, No. 1005, § 6; 2019, No. 315, § 2223.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and in (a); in (b)(1), deleted "or regulation" following "any rule" and substituted "rule" for "regulation" twice; and, in (b)(2), deleted "or regulations" following "rules" and "or regulation" following "rule".

Subchapter 3 — Catfish — Identification by Restaurants

SECTION.

20-61-301. Penalty — Injunction.

(a) Any person who knowingly violates any provision of this subchapter for which no civil penalty is provided by this subchapter shall upon conviction be guilty of a violation and subject to a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500) for the second and subsequent offenses.

(b) Nothing in this subchapter shall be construed as requiring the Director of the Arkansas Bureau of Standards to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c)(1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the affected person to present his or her views to the director.

(d)(1) The director is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule promulgated under this subchapter, notwithstanding the existence of other remedies at law.

(2) The injunction shall be issued without bond.

History. Acts 1981, No. 77, § 4; A.S.A. 1947, § 82-995.4; Acts 2005, No. 1994, § 137; 2019, No. 315, § 2224.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (d)(1).

20-61-304. Rules.

The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules as may be necessary for the efficient enforcement of this subchapter.

History. Acts 1981, No. 77, § 3; A.S.A. 1947, § 82-995.3; Acts 2019, No. 315, § 2225.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and follow-

ing "rules" in the section.

CHAPTER 64

ALCOHOL AND DRUG ABUSE

SUBCHAPTER.

2. Uniform Narcotic Drug Act.
3. Arkansas Drug Abuse Control Act.
5. Controlled Substances and Legend Drugs.
6. Alcohol and Drug Abuse Prevention Generally.
7. Persons Addicted to Alcohol.
8. Persons Addicted to Alcohol or Drugs.
9. Alcohol and Drug Abuse Treatment Program Licensing.
10. Alcohol and Drug Abuse Coordinating Council.
11. Task Force on Substance Abuse Prevention. [Repealed.]

Subchapter 2 — Uniform Narcotic Drug Act

SECTION.

20-64-201. Definitions.
20-64-203. Manufacturers and wholesalers.
20-64-204. Qualification for licenses.
20-64-205. Sale on written orders.
20-64-206. Sales by apothecaries.
20-64-208. Preparations exempted.
20-64-209. Records to be kept.
20-64-214. Narcotic drugs to be delivered to state official, etc.
20-64-219. Enforcement and cooperation.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-64-201. Definitions.

The following words and phrases, as used in this subchapter, shall have the following meanings, unless the context otherwise requires:

(1) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this subchapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of this state;

(2) "Dentist" means a person authorized by law to practice dentistry in this state;

(3) "Dispense" includes distribute, leave with, give away, dispose of, or deliver;

(4) "Federal narcotic laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs;

(5) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Director of the Department of Health as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian;

(6) "Laboratory" means a laboratory approved by the Director of the Department of Health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction;

(7) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions;

(8)(A) "Narcotic drug" means any drug which is defined as a narcotic drug by order of the Director of the Department of Health. In the formulation of definitions of narcotic drugs, the Director of the Department of Health is directed to include all drugs which he finds are narcotic in character and by reason thereof are dangerous to the public health or are promotive of addiction-forming or addiction-sustaining results upon the user which threaten harm to the public health, safety, or morals. In formulating these definitions, the Director of the Department of Health shall take into consideration the provisions of the federal narcotic laws as they exist, from time to time, and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal narcotic laws, so far as is possible under the standards established in this subdivision (8)(A), and under the policy of this subchapter.

(B) "Narcotic drug" also means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. This term does not include the isoquinoline alkaloids of opium;

(ii) Poppy straw and concentrate of poppy straw;

(iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(v) Ecgonine, its derivatives, their salts, isomers, and salts of isomers;

(vi) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions (8)(B)(i)-(v) of this section;

(9)(A) "Official written order" means an order written on a form provided for that purpose by the United States Administrator of Drug Enforcement under the laws of the United States making provision therefor, if order forms are authorized and required by federal law and, if an order form is not provided, then on an official form provided for that purpose by the Secretary of the Department of Health.

(B) When permitted by federal law, an official written order may also be written and submitted electronically;

(10) "Person" includes any corporation, association, copartnership, or one (1) or more individuals;

(11) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment;

(12) "Registry number" means the number assigned to each person registered under the federal narcotic laws;

(13) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(14) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state;

(15) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions; and

(16) "Written prescription" means a prescription that is presented to an apothecary in compliance with federal law and regulations, including a written, oral, faxed, or electronic prescription.

History. Acts 1937, No. 344, § 1; Pope's Dig., §§ 4615, 10126; Acts 1941, No. 324, §§ 1, 2; 1955, No. 155, § 1; 1959, No. 250, § 1; 1965, No. 409, § 1; A.S.A 1947, § 82-1001; Acts 1987, No. 42, § 1; 2013, No. 1331, §§ 4, 5; 2019, No. 389, § 66.

Amendments. The 2019 amendment, in (9)(A), substituted "Administrator of the United States Drug Enforcement Administration" for "Director of the Drug Enforcement Administration".

20-64-203. Manufacturers and wholesalers.

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Secretary of the Department of Health.

History. Acts 1937, No. 344, § 3; Pope's Dig., § 10128; A.S.A. 1947, § 82-1003; Acts 2019, No. 910, § 5090.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department

of Health".

20-64-204. Qualification for licenses.

No license shall be issued under § 20-64-203 unless and until the applicant therefor has furnished proof satisfactory to the Secretary of the Department of Health:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character;

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five (5) years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict.

The secretary may suspend or revoke any license for cause.

History. Acts 1937, No. 344, § 4; Pope's Dig., § 10129; A.S.A. 1947, § 82-1004; Acts 2019, No. 910, § 5091.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the introductory language; and substituted "secretary" for "director" in the last sentence.

20-64-205. Sale on written orders.

(1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

(a) To a manufacturer, wholesaler, or apothecary;

(b) To a physician, dentist, or veterinarian;

(c) To a person in charge of a hospital, but only for use by or in that hospital;

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties;

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or to a retired commissioned medical officer of the Army, the Navy, or the Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board of such ship or aircraft, when not in port. Provided: Such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft or

to a physician, surgeon, or retired commissioned medical officer of the Army, the Navy, or the Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the Public Health Service;

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) Use of Official Written Orders. An official written order for any narcotic drug shall be signed in quadruplicate by the person giving said order or his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein, and one (1) copy shall be sent to the Secretary of the Department of Health not later than the 10th of the month following the month during which the order was made. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two (2) years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this subchapter. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the federal narcotic laws, respecting the requirements governing the use of order forms, and the purchaser has sent a signed copy of the order to the secretary as aforesaid.

(4) Possession Lawful. Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivisions thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the Army, the Navy, or the Public Health Service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer nor dispense nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this subchapter.

History. Acts 1937, No. 344, § 5; Pope's Dig., § 10130; Acts 1941, No. 324, §§ 3, 4; 1961, No. 417, § 1; A.S.A. 1947, § 82-1005; Acts 2019, No. 910, § 5092.

Amendments. The 2019 amendment, in (3), substituted "Secretary of the Department of Health" for "Director of the Department of Health" and "secretary" for "director".

20-64-206. Sales by apothecaries.

(1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription or an oral prescription

in pursuance to rules, promulgated by the Secretary of the Department of Health under authority of § 20-64-219, of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two (2) years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this subchapter. The prescription must not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an offical written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one (1) ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty percent (20%) of the complete solution, to be used for medical purposes.

History. Acts 1937, No. 344, § 6; Pope's Dig., §§ 4616, 10131; Acts 1955, No. 155, § 2; 1965, No. 409, § 3; A.S.A. 1947, § 82-1006; Acts 2019, No. 910, § 5093.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (1).

20-64-208. Preparations exempted.

(a) Except as otherwise in this subchapter specifically provided, this subchapter shall not apply to the following cases:

(1) Administering, dispensing, or selling at retail any drug subject to this subchapter under any circumstances that the Secretary of the Department of Health determines, after reasonable notice and opportunity for hearing, not to be dangerous to the public health, or promotive of addiction-forming or addiction-sustaining results upon the user, or harmful to the public health, safety, or morals, and by order so proclaims. In arriving at his determination, the Secretary of the Department of Health shall consult with the United States Drug Enforcement Administration and give due weight to its investigations and determinations;

(2) Administering, dispensing, or selling at retail any medicinal preparation that contains in one (1) fluid ounce, or if a solid or semisolid preparation, in one (1) avoirdupois ounce, not more than one (1) grain of codeine or of any of its salts. The exemptions authorized by this subdivision (a)(2) are subject to the following conditions:

(A) That the medicinal preparation administered, dispensed, or sold contains, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and

(B) That the preparation is administered, dispensed, purchased, and sold in good faith as a medicine and not for the purpose of evading the provisions of this subchapter.

(b) Nothing in this section shall limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed, or sold to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this subchapter.

History. Acts 1937, No. 344, § 8; Pope's Dig., § 10133; Acts 1941, No. 324, § 5; 1955, No. 155, § 3; 1959, No. 250, § 2; 1965, No. 409, § 4; A.S.A. 1947, § 82-1008; Acts 2019, No. 910, § 5094.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" twice in (a)(1).

20-64-209. Records to be kept.

(1) Physicians, Dentists, Veterinarians, and Other Authorized Persons. Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subdivision (1) if any such person using small quantities of solutions or other preparation of such drugs for local application shall keep a record of the quantity, character, and potency of such solution or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping record of the amount of such solution or other preparation applied by him to individual patients.

(2) Manufacturers and Wholesalers. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision (5) of this section.

(3) Apothecaries. Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision (5) of this section.

(4) Vendors of Exempted Preparations. Every person who purchases for resale, or who sells narcotic drug preparations exempted by § 20-64-208, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subdivision (5) of this section.

(5) Form and Preservation of Records. The form of records shall be prescribed by the Secretary of the Department of Health. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and

quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacturer, and the date of such production or removal from process of manufacturer; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two (2) years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

(6) Records of Purchasers for Resale. Every person who purchases cannabis for resale should keep a record of its date of receipt, name and address of the person for whom received, and the proportion of resin contained in or producible from the plant cannabis sativa L., received or produced.

History. Acts 1937, No. 344, § 9; Pope's Dig., § 10134; Acts 1941, No. 324, § 6; 1965, No. 409, § 5; A.S.A. 1947, § 82-1009; Acts 2019, No. 910, § 5095.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (5).

20-64-214. Narcotic drugs to be delivered to state official, etc.

Upon delivery to the Secretary of the Department of Health of any narcotic drugs discarded by the owner thereof or other person entitled to the possession or custody thereof, and upon the Secretary of the Department of Health delivering to such person an itemized receipt therefor, the Secretary of the Department of Health is empowered to destroy such narcotic drugs; provided, that the Secretary of the Department of Health shall keep for a period of three (3) years from the date of destruction a record of such transaction, showing the name and address of the person delivering the narcotic drugs, an itemized description thereof, the date and place of delivery, and the date of destruction.

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction shall be kept, and a return under oath, reporting

said destruction, shall be made to the court or magistrate and to the Administrator of the United States Drug Enforcement Administration by the officer who destroys them;

(b) Upon written application by the Secretary of the Department of Health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them except heroin and its salts and derivatives, to said Secretary of the Department of Health, for distribution or destruction, as hereinafter provided;

(c) Upon application by any hospital within this state not operated for private gain, the Secretary of the Department of Health may in his discretion deliver any narcotic drugs that have come into his custody by authority of this section to the applicant for medicinal use. The Secretary of the Department of Health may from time to time deliver excess stocks of such narcotic drugs to the Administrator of the United States Drug Enforcement Administration or may destroy the same;

(d) The Secretary of the Department of Health shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal and state officers charged with the enforcement of federal and state narcotic laws.

History. Acts 1937, No. 344, § 14; Pope's Dig., § 10139; Acts 1961, No. 416, § 1; A.S.A. 1947, § 82-1014; Acts 2019, No. 910, § 5096.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" throughout the section.

20-64-219. Enforcement and cooperation.

It is hereby made the duty of the Secretary of the Department of Health, his officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all prosecuting attorneys, to enforce all provisions of this subchapter, except those specifically designated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs.

The authority to promulgate rules for the efficient enforcement of this act is hereby vested in the secretary. The secretary is hereby authorized to make the rules promulgated under this subchapter conform insofar as possible under the standards established herein and under the policies of this subchapter with those regulations promulgated under the federal Narcotic Act.

History. Acts 1937, No. 344, § 19; Pope's Dig., § 10144; Acts 1955, No. 155, § 4; 1965, No. 409, § 6; A.S.A. 1947, § 82-1019; Acts 2019, No. 910, § 5097.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the first paragraph; and substituted "secretary" for "director" twice in the second paragraph.

Subchapter 3 — Arkansas Drug Abuse Control Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-64-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) [Repealed.]

(2) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed the drug and which thereby falsely purports, or is represented to be the product of, or to have been packed or distributed by, another drug manufacturer, processor, packer, or distributor;

(3) "Depressant or stimulant drug" means:

(A) Any drug which contains any quantity of barbituric acid or any of the salts of barbituric acid or any derivative of barbituric acid which has been designated under section 502(d) of the Federal Food, Drug, and Cosmetic Act, as presently in force and effect, as habit-forming and such other derivatives as the State Board of Health shall define as habit-forming, provided that in formulating these definitions, the board shall take into consideration the provisions of the Federal Food, Drug, and Cosmetic Act as it exists from time to time and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the Federal Food, Drug, and Cosmetic Act, insofar as is possible under the standards established in this subchapter and under the policy of it;

(B) Any drug which contains any quantity of:

(i) Amphetamine or any of its optical isomers;

(ii) Any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(iii) Any substance designated by regulations promulgated under the Federal Food, Drug, and Cosmetic Act or by rule promulgated by the board as habit-forming because of its stimulant effect on the central nervous system. In formulating these rules, the board shall take into consideration the regulations promulgated from time to time under the Federal Food, Drug, and Cosmetic Act and shall amend the rules so as to keep them in harmony with the definitions prescribed by the Federal Food, Drug, and Cosmetic Act.

(C) Any drug which contains any quantity of a substance designated by regulations promulgated under the Federal Food, Drug, and Cosmetic Act or by rule promulgated by the board as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect, provided that the board in formulating its rules shall take into consideration all regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act and shall amend its rules so as to keep them in harmony with the regulations prescribed by the Federal Food, Drug, and Cosmetic Act;

(4) "Drug" means articles recognized in the official *United States Pharmacopoeia,* or official *Homeopathic Pharmacopoeia of the United States,* or official *National Formulary,* or any supplement to any of them, but does not include devices or their components, parts, or accessories;

(5) "Federal act" designates the Federal Food, Drug, and Cosmetic Act, which was in effect on June 30, 1967, and all amendments thereto;

(6) "Manufacture", "compound", or "process" shall include repackaging or otherwise changing the container, wrapper, or labeling of any drug package in the furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer, and the term "manufacturers", "compounders", and "processors" shall be deemed to refer to persons engaged in those defined activities;

(7) "Person" includes individual, partnership, corporation, and association; and

(8) "Practitioner" means a physician, dentist, veterinarian, or other person licensed in this state to prescribe or administer drugs which are subject to this subchapter.

History. Acts 1967, No. 492, § 2; A.S.A. 1947, § 82-2102; Acts 2019, No. 315, §§ 2226, 2227; 2019, No. 389, § 67.

Amendments. The 2019 amendment by No. 315 inserted "by rule promulgated" in the first sentence of (3)(B)(iii) and in (3)(C); and substituted "rules" for "regulations" four times in (3)(B)(iii) and (3)(C).

The 2019 amendment by No. 389 repealed (1).

20-64-303. Minor violations of subchapter.

Nothing in this subchapter shall be construed as requiring the State Board of Health to report for the institution of proceedings under this subchapter minor violations of this subchapter whenever the Secretary of the Department of Health believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History. Acts 1967, No. 492, § 6; A.S.A. 1947, § 82-2106; Acts 2019, No. 910, § 5098.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health".

20-64-308. Seizure and forfeiture of contraband — Hearing and disposition.

(a)(1) When an article, drug, or other thing is seized and forfeited under the provisions of § 20-64-307, the Secretary of the Department of Health or his or her authorized agent shall, within five (5) days thereafter, publish in a newspaper having a statewide circulation a notice containing a list of the articles, equipment, drugs, or other things seized, the name or names of the person or persons, if known, from whom taken, and the place where seized.

(2) The notice shall advise that the article, drug, or other thing seized and forfeited will be destroyed or sold by the secretary at the expiration of thirty (30) days from the date of publication of the notice.

(3) Any person claiming any interest in the article, equipment, drug, or other thing may, at any time within the thirty (30) days after the publication of the notice, petition the secretary for a hearing to be held in the secretary's office in Little Rock.

(4) The secretary shall set a date for the hearing not later than ten (10) days after receiving the written request at which time witnesses shall be sworn and evidence shall be taken.

(5) Within fifteen (15) days after such hearing, the secretary shall enter his or her written findings of fact and order upon the testimony so presented.

(6) The findings of fact and order of the secretary may be appealed to the Pulaski County Circuit Court by lodging with the court within fifteen (15) days after the secretary's order has been entered a transcript of record of the hearing held before the secretary. The circuit court shall hear no new evidence on such appeal and shall render its judgment only on errors of law.

(7) An appeal from the judgment of the circuit court may be taken to the Supreme Court.

(b)(1) If the secretary receives no written petition for a hearing within thirty (30) days from the date of the publication of notice as provided in this section, the secretary shall, in his or her discretion, proceed to take bids on the article, equipment, drug, or other things seized and forfeited under § 20-64-307 and shall sell them to the

highest bidder, or he or she may destroy the articles, equipment, drugs, or other things and shall preserve a written record thereof for two (2) years.

(2) The proceeds for the sale of the articles, drugs, or other things shall be deposited with the Treasurer of State as nonrevenue receipts for credit to the State Apportionment Fund as general revenues to be distributed for the respective purposes as provided by law.

History. Acts 1967, No. 492, § 5; A.S.A. 1947, § 82-2105; Acts 2019, No. 910, § 5099.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a)(1); and substituted "secretary" for "director" throughout the section.

20-64-316. Authority of Department of Health employees to investigate, examine, and inspect.

Any officer or employee of the Department of Health designated by the Secretary of the Department of Health to conduct examinations, investigations, or inspections under this subchapter relating to depressant or stimulant drugs or to counterfeit drugs may, when so authorized by the secretary:

(1) Carry firearms;

(2) Execute and serve search warrants and arrest warrants;

(3) Execute seizure by process issued pursuant to §§ 20-64-307 and 20-64-308;

(4) Make arrests without warrant for offenses under this subchapter with respect to drugs if the offense is committed in his or her presence; and

(5) Make seizures of drugs or containers or equipment, punches, dies, plates, stone, labeling, or other things, if they are, or he or she has reasonable grounds to believe that they are, subject to seizure and condemnation under §§ 20-64-307 and 20-64-308.

History. Acts 1967, No. 492, § 9; A.S.A. 1947, § 82-2109; Acts 2019, No. 910, § 5100.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" and "secretary" for "director" in the introductory language.

20-64-317. Rules.

(a) The authority to promulgate rules for the efficient enforcement of this subchapter is vested in the State Board of Health.

(b) Before the rules or amendments thereto shall become effective, the board shall publish notice two (2) times weekly for two (2) consecutive weeks in a newspaper of general circulation in this state, setting forth in the newspaper notice a concise summary of the proposed rule or amendment thereto and setting forth, in addition, the time and place at which open public hearings are to be held on the rules.

(c) The hearing shall be held not earlier than ten (10) days nor later than fifteen (15) days following the last published notice thereon.

(d) The board is authorized to make the rules promulgated under this subchapter conform, insofar as practicable, with those regulations promulgated under the Federal Food, Drug, and Cosmetic Act.

History. Acts 1967, No. 492, § 8; A.S.A. 1947, § 82-2108; Acts 2019, No. 315, § 2228.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and made similar changes throughout (a) and (b); and, in (d), substituted "rules" for "regulations" and inserted "regulations".

Subchapter 5 — Controlled Substances and Legend Drugs

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-64-503. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing;

(2) "Blood component" means that part of blood separated by physical or mechanical means;

(3) [Repealed.]

(4) "Controlled substance" means those substances, drugs, or immediate precursors listed in Schedules I through VI of the Uniform Controlled Substances Act, § 5-64-101 et seq., and revised by the Secretary of the Department of Health pursuant to his or her authority under §§ 5-64-214 — 5-64-216;

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug;

(6)(A) "Legend drug" means a drug limited by section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(i) Habit-forming;

(ii) Toxic or having potential for harm; or

(iii) Limited in its use to use under a practitioner's supervision by the new drug application for the drug.

(B) The product label of a legend drug is required to contain the statement: "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION".

(C) A legend drug includes prescription drugs subject to the requirement of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act which shall be exempt from section 502(f)(1) if certain specified conditions are met;

(7) "Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug;

(8) "Person" includes individual, partnership, corporation, business firm, and association;

(9) "Prescription drug" means controlled substances, legend drugs, and veterinary legend drugs as defined herein;

(10) "Veterinary legend drugs" means drugs defined in 21 C.F.R. § 201.105 and bearing a label required to bear the cautionary statement: "CAUTION: FEDERAL LAW RESTRICTS THIS DRUG TO USE BY OR ON ORDER OF A LICENSED VETERINARIAN";

(11) "Wholesale distribution" means the distribution of prescription drugs to persons other than consumers or patients but does not include:

(A) Intracompany sales;

(B) The purchase or other acquisition by a hospital or other healthcare entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or healthcare entities that are members of the organizations;

(C) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other healthcare entities that are under common control. For the purposes of this section, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization whether by ownership of stock or voting rights, by contract, or otherwise;

(E) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(F) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(H) The sale, purchase, or trade of blood components intended for transfusion; and

(12) "Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers' own-label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; prescription drug repackagers; physicians; dentists; veterinarians; birth control and other clinics; individuals; hospitals; nursing homes and their providers; health maintenance organizations and other healthcare providers; and retail and hospital pharmacies that conduct wholesale distributions. A wholesale drug distributor shall not include any for-hire carrier or person or entity hired solely to transport prescription drugs.

History. Acts 1969, No. 173, § 1; 1979, No. 751, § 3; 1981, No. 257, § 1; A.S.A. 1947, § 82-2113; Acts 1991, No. 739, § 2; 2019, No. 389, §§ 68, 69; 2019, No. 910, § 5101.

Amendments. The 2019 amendment by No. 389 repealed (3); and substituted "502(f)(1)" for "502(F)(1)" in (6)(C).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (4).

20-64-507. Rules.

(a) The Arkansas State Board of Pharmacy shall adopt rules for the wholesale distribution of prescription drugs which promote the public health and welfare and which comply with the minimum standards, terms, and conditions of the Prescription Drug Marketing Act and federal regulations, including without limitations 21 C.F.R. § 205, for licensing by state authorities of persons who engage in the wholesale distribution in interstate commerce of prescription drugs. The rules shall include without limitation:

(1) Minimum information from each wholesale distributor required for licensing and renewal of licenses;

(2) Minimum qualifications of persons who engage in the wholesale distribution of prescription drugs;

(3) Appropriate education or experience, or both, of persons employed in wholesale distribution of prescription drugs who assume responsibility for positions related to compliance with state licensing requirements;

(4) Minimum requirements for the storage and handling of prescription drugs; and

(5) Minimum requirements for the establishment and maintenance of prescription drug distribution records.

(b) In the event that this subchapter or rules promulgated under this subchapter conflict with the federal Prescription Drug Marketing Act or federal regulations, the federal Prescription Drug Marketing Act or federal regulations shall control.

(c) The board shall appoint an advisory committee composed of seven (7) members, one (1) of whom shall be a representative of a pharmacy

but who shall not be a member of the board, three (3) of whom shall be representatives of wholesale drug distributors, and three (3) of whom shall be representatives of drug manufacturers. The committee shall review and make recommendations to the board on the merit of all rules dealing with pharmacy distributors, wholesale drug distributors, and drug manufacturers which are proposed by the board.

History. Acts 1969, No. 173, § 3; 1979, No. 751, § 5; 1981, No. 257, § 3; A.S.A. 1947, § 82-2115; Acts 1991, No. 739, § 6; 2019, No. 315, § 2229.

Amendments. The 2019 amendment substituted "Rules" for "Regulations" in the section heading; substituted "rules" for "regulations" in the introductory language of (a) twice and in (b); and deleted "and regulations" following "rules" in the second sentence of (c).

20-64-508. Revocation or suspension of licenses.

The Arkansas State Board of Pharmacy may revoke or suspend an existing license or may refuse to issue a license under this subchapter if the holder or applicant has committed or is found guilty by the board of any of the following:

(1) Violation of any federal, state, or local law, rule, or regulation relating to drugs;

(2) Violation of any provisions of this subchapter or any rule promulgated hereunder; or

(3) Commission of an act or engaging in a course of conduct which constitutes a clear and present danger to the public health and safety.

History. Acts 1969, No. 173, § 3; 1979, No. 751, § 5; 1981, No. 257, § 3; A.S.A. 1947, § 82-2115; Acts 1991, No. 739, § 7; 2019, No. 315, § 2230.

Amendments. The 2019 amendment inserted "rule" in (1); and substituted "rule" for "regulation" in (2).

Subchapter 6 — Alcohol and Drug Abuse Prevention Generally

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-64-602. Division of Aging, Adult, and Behavioral Health Services — Powers and duties.

(a) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall:

(1) Coordinate all state and federally funded programs dealing with alcohol and drug abuse in the state;

(2) Provide information to the public on the problems and needs of alcohol and drug abusers;

(3) Make evaluations of the effectiveness and efficiency of various agencies and programs relating to alcohol and drug abuse; and

(4) Exercise all authority not inconsistent with the provisions of this subchapter as may be necessary to carry out the purposes and intent of this subchapter.

(b) The duties and responsibilities of the division shall include the following:

(1) Coordinate all state and federally funded programs, services, and activities relating to the prevention, treatment, rehabilitation, education intervention, and training of alcoholics and persons with alcohol and other drug abuse-related problems;

(2) Develop, administer, and implement a state plan for alcohol abuse and drug abuse prevention as defined in Pub. L. No. 92-255, or its successor, and develop reports on state and local activities in alcohol and drug abuse prevention with recommendations for allocations of resources by refining goals and establishing priorities;

(3) Sponsor, encourage, and conduct research into the causes, nature, and treatment of alcoholism, alcohol abuse, and drug abuse and serve as a central source of information and data collection regarding alcohol abuse and drug abuse in this state;

(4) Serve in a liaison capacity between the state and local communities and the United States Government with respect to alcohol abuse and drug abuse programs and, subject to the approval of the Secretary of the Department of Human Services, enter into agreements with and make commitments on behalf of the State of Arkansas to meet requirements for obtaining federal assistance or grants for partially financing alcohol abuse and drug abuse programs in the state;

(5) Divide the state into appropriate regions for the purpose of planning and the provision of services;

(6) As may be deemed necessary, establish district, regional, or other substate advisory councils to help carry out the duties of the division;

(7) Review, on a continuing basis, existing and proposed state statutes relating to alcohol abuse and drug abuse education, prevention, intervention, treatment rehabilitation, and training and make appropriate recommendations for legislation to the secretary and the General Assembly;

(8) Review, on a continuing basis, existing and proposed rules, policies, programs, and procedures of state agencies and political subdivisions concerning alcohol and drug abuse and recommend to the

appropriate agency or political subdivision changes in or additions to the rules, policies, programs, and procedures;

(9) Review those budget items proposed by other state agencies which are intended for alcohol or drug abuse prevention, intervention, treatment, education, rehabilitation, and training services and make recommendations to the secretary;

(10) Determine the training and orientation needs of professionals, paraprofessionals, supervisors, managers, and other persons in the public and private sectors who come in contact with those persons affected directly or indirectly with alcohol or drug abuse problems or who may impact in a preventive way with individuals who might otherwise become dependent upon alcohol or other drugs;

(11) Assist in the development of programs designed to meet identified needs;

(12) Provide technical assistance, guidance, consultation, information, and other appropriate services to local programs, local government, district and regional bodies, and state agencies regarding the creation or modification of alcohol or drug abuse programs and procedures;

(13) Establish and apply criteria for evaluation of:

(A) The effectiveness of alcohol or drug abuse programs conducted in this state; and

(B) The accuracy of information contained in and the effectiveness of literature and audiovisual aids prepared to combat alcohol and drug abuse;

(14) Specify uniform methods for keeping statistical information on all individuals receiving services related to the use or misuse of alcohol and drugs and also develop and maintain a centralized data collection and dissemination system for alcohol and drug abuse programs and activities consistent with federal and state statutes, rules, and regulations;

(15) Prepare an annual report to coincide with appropriate federal reports to be submitted to the advisory council, the secretary, and the Governor describing activities of the division and the accomplishments and effectiveness of its programs and also prepare special reports as deemed necessary for the advisory council to aid in the fulfillment of its advisory responsibilities;

(16) Develop policies, plans, and programs sponsoring and encouraging research and prevention activities in this state, especially in the categories of children and youth, women, minorities, senior citizens, and incarcerated persons but not limited to these areas;

(17) Request, as deemed necessary, reports in sufficient detail for various departments of state government regarding their alcohol or drug abuse program activities;

(18) Cooperate with and assist and solicit the cooperation and assistance of appropriate state agencies, community mental health centers and clinics, hospitals, doctors, law enforcement officials, courts, ministers, and any and all other public or private agencies or organi-

zations involved in or dedicated to providing services to those persons who have alcohol or drug abuse-related problems;

(19) Develop and promulgate standards and rules for accrediting, certifying, and licensing alcohol and drug abuse prevention, treatment, and rehabilitation programs and facilities within the state, under the supervision and direction of the secretary, provided that the standards and rules shall not supersede standards and rules promulgated by other state agencies for programs or facilities whose primary mission is not alcohol and drug abuse prevention, treatment, and rehabilitation;

(20) Review the regulations, guidelines, requirements, and procedures of state and federally funded operating agencies in terms of their consistency with state alcohol and drug abuse prevention policies, priorities, procedures, and objectives and assist the agencies in making changes therein as may be appropriate;

(21) Maintain a liaison with all state and local agencies concerned with drug traffic prevention;

(22) Conduct annual site visits to all state and federally funded alcohol and drug abuse programs and facilities to determine their compliance with the standards and rules for accrediting, certifying, and licensing as set forth in subdivision (b)(19) of this section;

(23) Apply for and assist others in applying for state, private, or federal grants-in-aid and, with the advice and counsel of the advisory council, approve applications for state and federal grants and enter into grants and contracts with public agencies, institutes of higher education, and private organizations or individuals for the purpose of carrying out research, prevention, education, training, treatment, intervention, and rehabilitation activities or special projects which bear directly on the problems related to alcohol and drug abuse or misuse. The contracts or grants may be entered into for these purposes without performance bonds;

(24) Be the primary agency responsible for receiving and disbursing all state, federal, and other public moneys collected for the purpose of combating alcohol and drug abuse-related problems in this state and to account for such receipts and disbursals as are made; and

(25) Do and perform all other actions and exercise all other authority not inconsistent with the provisions of this subchapter as may be necessary to carry out the purposes and intent of this subchapter.

History. Acts 1977, No. 644, § 1; A.S.A. 1947, § 82-2132; Acts 2013, No. 1107, § 20; 2017, No. 913, § 92; 2019, No. 315, §§ 2231-2233; 2019, No. 910, §§ 5208-5212.

Amendments. The 2019 amendment by No. 315 inserted "rules" in (b)(14); substituted "standards and rules" for "standards, rules, and regulations" throughout (b)(19) and in (b)(22); and updated an internal reference in (b)(22).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" and "secretary" for "director" throughout the section.

20-64-603. Secretary of the Department of Human Services — Administration of state plans.

The Secretary of the Department of Human Services shall be the single state authority and shall have primary responsibility for administering the state plan on alcohol abuse and alcoholism and the state plan on drug abuse prevention.

History. Acts 1977, No. 644, § 1; A.S.A. 1947, § 82-2132; Acts 2019, No. 910, § 5213.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in the section heading and in the section.

Subchapter 7 — Persons Addicted to Alcohol

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-64-702. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that the person has lost the power of self-control with respect to the use of such beverages, or who while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare;

(2) "Alcoholic beverages" includes alcoholic spirits, liquors, wines, beer, and every liquid or fluid containing alcohol which is capable of being consumed by human beings and produces intoxication in any form or in any degree; and

(3) "Alcoholism" has reference to any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages.

(4) [Repealed.]
(5) [Repealed.]

History. Acts 1955, No. 411, § 3; A.S.A. 1947, § 83-703; Acts 2017, No. 913, § 93; 2019, No. 389, § 70.

Amendments. The 2019 amendment repealed (4) and (5).

20-64-704. Division of Aging, Adult, and Behavioral Health Services — Powers and duties.

The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall have the following duties and functions:

(1) Carry on a continuing study of the problems of alcoholism in this state and seek to focus public attention on the problems;

(2) Establish cooperative relationships with other state and local agencies, hospitals, clinics, public health, welfare, and law enforcement authorities, educational and medical agencies and organizations, and other related public and private groups;

(3) Promote or conduct educational programs on alcoholism, purchase and provide books, films, and other educational material, furnish funds or grants to the Division of Elementary and Secondary Education, institutions of higher education, and medical schools for study and research, and modernize instruction regarding the problems of alcoholism;

(4) Provide for treatment and rehabilitation of alcoholics and allocate funds for:

(A) The establishment of local alcoholic clinics, with or without short-term hospitalization facilities, by providing funds for not to exceed seventy-five percent (75%) of the total operating cost of the clinics operated by a city or a county;

(B) Providing treatment for those alcoholics needing from five (5) to ninety (90) days' hospitalization, whether voluntary patients or those admitted on court order, by furnishing the Department of Human Services State Institutional System Board all of the funds needed for the proper operation of segregated wards for treatment of the patients. The funds and necessary personnel shall be in addition to all funds and personnel provided the board in the regular departmental appropriation bill;

(C) Contracting with hospitals or institutions not under its control for the care, custody, and treatment of alcoholics; and

(D) Providing for the detention, care, and treatment of recalcitrant alcoholics and alcoholics with long police court records, by furnishing funds for the operation of farm or colony-type facilities under the provisions of subdivision (4)(A) or subdivision (4)(B) of this section; and

(5) While the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services necessarily must, and does, have discretion as to proportions in which it allocates funds to the

various aspects of this problem, it is contemplated and intended that the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall make every reasonable effort not to concentrate too largely on any one (1) phase of the problem at the expense or to the detriment of other phases. For example, but not limited to, the following phases:

(A) That research should not be slowed because of funds directed to treatment, and vice versa;

(B) That treatment should not be slowed because of funds directed to rehabilitation, and vice versa; and

(C) That rehabilitation should not be slowed because of funds directed to research, and vice versa.

History. Acts 1955, No. 411, § 5; A.S.A. 1947, § 83-705; Acts 2013, No. 1107, § 21; 2017, No. 913, § 94; 2019, No. 910, §§ 2298, 2299.

Amendments. The 2019 amendment substituted "Division of Elementary and Secondary Education" for "Department of Education" in (3); and substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "division" twice in (5).

20-64-705. Division of Aging, Adult, and Behavioral Health Services — Power to accept gifts.

(a)(1) The deputy director, on behalf of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, may receive any federal means, grants, contributions, gifts, and loans which are payable or distributable to the State of Arkansas by the United States Government or any of its agencies or instrumentalities, under any existing or future federal laws or statutes or rules or regulations of the agencies or instrumentalities, received for or on account of any of the functions performable by the division.

(2) The division may also receive gifts, grants, donations, fees, conveyances, or transfers of money and property, both real and personal, from private and public sources, to effectuate the purposes of this subchapter.

(b) The deputy director, on behalf of the division, shall sell or dispose of such real or personal property as the division deems advisable, upon specific authorization of the division.

(c) Any funds and income from any property so furnished or transferred to the deputy director on behalf of the division shall be placed in the State Treasury in a special fund and expended in the same manner as other state moneys are expended, upon warrants drawn by the comptroller upon the order of the division.

(d) Any of the moneys, funds, and property described in this section are appropriated for the purpose of carrying out the provisions of this subchapter.

History. Acts 1955, No. 411, § 7; A.S.A. 1947, § 83-707; Acts 2013, No. 1107, § 22; 2017, No. 913, § 94; 2019, No. 389, § 71.

Amendments. The 2019 amendment deleted "called the Alcohol and Drug Abuse Prevention Fund Account [re-

pealed]" following "special fund" in (c).

Subchapter 8 — Persons Addicted to Alcohol or Drugs

SECTION.

20-64-805. Inspections — Procedures.

(a) To assure compliance with this subchapter, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, through its authorized agents, may visit or investigate any receiving facility or program to which persons are admitted or committed under this subchapter.

(b) The division shall promulgate written procedures to implement this subchapter on or before July 1, 1995. The provisions shall:

(1) Designate receiving facilities or programs within prescribed geographical areas of the state for purposes of voluntary admissions or involuntary commitments under this subchapter; and

(2) Establish ongoing mechanisms, guidelines, and rules for review and refinement of the treatment programs offered in the receiving facilities or programs for alcohol and other drug abuse throughout this state.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 21; 1995, No. 1268, § 3; 2013, No. 1107, § 28; 2017, No. 913, § 97; 2019, No. 315, § 2234.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(2).

20-64-812. Absence from receiving facility or program.

(a)(1) Treatment staff shall immediately inform the prosecuting attorney of the county where the receiving facility or program is located if, in the opinion of the treatment staff, a person who voluntarily admitted himself or herself meets the criteria for involuntary commitment set forth in this subchapter and the person has absented himself or herself from the receiving facility or program.

(2) The prosecuting attorney shall initiate an involuntary commitment under this subchapter against the person.

(3)(A) Statements made by the prosecuting attorney in furtherance of the petition shall not be deemed to be a disclosure.

(B) Statements made by the treating staff to the prosecuting attorney shall be treated as confidential, and the prosecuting attorney shall remain subject to the confidentiality requirements as set forth in state and federal law, rules, and regulations.

(b) If any person shall, during a period of involuntary commitment, absent himself or herself from the receiving facility or program without leave, he or she may be returned by receiving facility or program security personnel or law enforcement officers without further proceed-

ings. The circuit courts of this state are hereby authorized to enter such orders as may be necessary to effect the return.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 5; 1995, No. 1268, § 5; 2019, No. 315, § 2235.

Amendments. The 2019 amendment inserted "rules" in (a)(3)(B).

Subchapter 9 — Alcohol and Drug Abuse Treatment Program Licensing

SECTION.

20-64-907. Reporting requirements.

(a) All persons, partnerships, associations, or corporations operating alcohol and drug abuse treatment programs in the State of Arkansas, whether licensed by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services or expressly exempted from licensure, shall be required to furnish such information at such times and in such form as may be required by the division.

(b) The division shall promulgate rules and prescribe forms for the implementation of this section.

History. Acts 1995, No. 173, § 10; Acts 2013, No. 1107, § 36; 2017, No. 913, § 105; 2019, No. 315, § 2236.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

20-64-910, 20-64-911. [Repealed.]

Publisher's Notes. These sections, concerning the creation and duties of the Task Force on Substance Abuse Treatment Services, were repealed by Acts 2019, No. 389, § 72, effective July 24, 2019. The sections expired September 30, 2017, pursuant to identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, §§ 44, 45, 127. The sections were derived from the following sources:

20-64-910. Acts 2003, No. 1457, § 1; 2005, No. 64, § 1; 2007, No. 688, § 1; 2009, No. 471, § 1; 2013, No. 1107, § 38; 2016 (3rd Ex. Sess.), No. 2, § 44; 2016 (3rd Ex. Sess.), No. 3, § 44; 2017, No. 913, § 107.

20-64-911. Acts 2003, No. 1457, § 2; 2013, No. 1132, § 39; 2016 (3rd Ex. Sess.), No. 2, § 45; 2016 (3rd Ex. Sess.), No. 3, § 45.

Subchapter 10 — Alcohol and Drug Abuse Coordinating Council

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Ar-

kansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-64-1001. Arkansas Drug Director.

(a)(1) There is created within the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services a position of Arkansas Drug Director.

(2) The Arkansas Drug Director shall be appointed by the Governor and shall serve at the pleasure of the Governor.

(3) The Arkansas Drug Director shall report to the Secretary of the Department of Human Services.

(b) The Arkansas Drug Director shall serve as the coordinator for development of an organizational framework to ensure that alcohol and drug programs and policies are well planned and coordinated.

(c) The Arkansas Drug Director, in cooperation with the Department of Finance and Administration, shall perform financial monitoring of each drug task force of the state to ensure that grant funds are being expended according to law and to ensure that the drug task force's financial record system is adequate to provide a clear, timely, and accurate accounting of all asset forfeitures, revenues, and expenditures.

(d)(1) The Arkansas Drug Director shall maintain an office at a location to be determined by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services. All records required by law to be kept by the Arkansas Drug Director shall be maintained at the office.

(2) The Arkansas Drug Director is authorized to establish and enforce rules regarding the management of the Special State Assets Forfeiture Fund and the maintenance and inspection of drug task force records concerning asset forfeitures, revenues, expenditures, and grant funds.

(3) The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services is authorized to hire employees to assist in these functions.

History. Acts 1989, No. 855, § 1; 2001, No. 1690, § 3; 2005, No. 1954, § 6; 2017, No. 913, §§ 108, 109; 2019, No. 910, § 5214.

Amendments. The 2019 amendment rewrote (a).

20-64-1002. Arkansas Alcohol and Drug Abuse Coordinating Council — Creation.

(a) There is hereby established the Arkansas Alcohol and Drug Abuse Coordinating Council, hereafter referred to in this subchapter as the "coordinating council".

(b) The coordinating council shall be composed of twenty-seven (27) members as follows:

(1) Thirteen (13) members of the coordinating council shall be administrative officers of the following agencies, or their appropriate designees, confirmed by gubernatorial appointment:

(A) The Arkansas Drug Director, who shall serve as Chair of the Arkansas Alcohol and Drug Abuse Coordinating Council;

(B) The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(C) The Director of the Division of Arkansas State Police;

(D) The Commissioner of Elementary and Secondary Education;

(E) The Director of the Arkansas Department of Transportation;

(F) The Director of the Division of Correction;

(G) The Secretary of the Department of Finance and Administration;

(H) The Adjutant General of the Arkansas National Guard;

(I) The Attorney General;

(J) The Director of the State Crime Laboratory;

(K) The Director of the Office of Alcohol Testing of the Department of Health;

(L) The Director of the Administrative Office of the Courts; and

(M) The Director of the Division of Community Correction; and

(2) The following persons shall be appointed by the Governor for three-year terms and will not serve more than two (2) consecutive terms:

(A) One (1) police chief, one (1) county sheriff, and one (1) drug court judge;

(B) A prosecuting attorney;

(C) A private citizen not employed by the state or the United States Government;

(D) A director of a publicly funded alcohol and drug abuse treatment program;

(E) A school drug counselor;

(F) A director of a drug abuse prevention program;

(G) A director of a driving while intoxicated program;

(H) A health professional; and

(I) Four (4) members from the state at large who have demonstrated knowledge of or interest in alcohol and drug abuse prevention, at least two (2) of whom shall be recovering persons.

(c) The coordinating council members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d) The coordinating council may appoint noncouncil members for PEER review of grants, and the PEER Review Committee members

shall be entitled to reimbursement for actual expenses and mileage to be paid by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services from funds appropriated for its maintenance and operation.

(e) A United States Attorney for Arkansas or his or her designee shall serve on the coordinating council in an advisory capacity.

History. Acts 1989, No. 855, §§ 2, 5; 1995, No. 551, § 1; 1997, No. 250, § 203; 2005, No. 1453, § 1; 2013, No. 1107, §§ 39, 40; 2017, No. 707, § 63; 2017, No. 913, §§ 110, 111; 2019, No. 910, § 5215.

Amendments. The 2019 amendment substituted "Division of Arkansas State Police" for "Department of Arkansas State Police" in (b)(1)(C); substituted "Commissioner of Elementary and Secondary Education" for "Commissioner of Education" in (b)(1)(D); substituted "Division of Correction" for "Department of Correction" in (b)(1)(F); substituted "Secretary" for "Director" in (b)(1)(G); substituted "Director" for "Executive Director" in (b)(1)(J); and substituted "Division of Community Correction" for "Department of Community Correction" in (b)(1)(M).

20-64-1003. Arkansas Alcohol and Drug Abuse Coordinating Council — Functions, powers, and duties.

(a) The Arkansas Alcohol and Drug Abuse Coordinating Council shall have the responsibility for overseeing all planning, budgeting, and implementation of expenditures of state and federal funds allocated for alcohol and drug education, prevention, treatment, and law enforcement.

(b) The Arkansas Alcohol and Drug Abuse Coordinating Council shall have the following functions, powers, and duties:

(1) All federal money received by the State of Arkansas for drug law enforcement, education, or prevention shall be reviewed by the Arkansas Alcohol and Drug Abuse Coordinating Council for disbursement, accountability, and evaluation; and

(2) The Arkansas Alcohol and Drug Abuse Coordinating Council shall review and coordinate all school-based drug education, prevention, and awareness programs and efforts funded by the state.

(c) The Arkansas Alcohol and Drug Abuse Coordinating Council shall assist community-based prevention councils in planning and coordinating prevention activities, promoting innovative programs, developing stable funding sources, and disseminating current information. These local councils should be racially balanced and shall include at least one (1) representative from each of the following groups:

(1) One (1) law enforcement officer;

(2) One (1) school board member;

(3) One (1) school administrator;

(4) One (1) school teacher;

(5) One (1) parent;

(6) One (1) student;

(7) One (1) alcohol and drug abuse program director; and

(8) One (1) health professional.

(d) The Arkansas Alcohol and Drug Abuse Coordinating Council shall develop training and education programs for criminal justice

personnel in drug-related matters in conjunction with the Division of Law Enforcement Standards and Training.

(e)(1) The Arkansas Alcohol and Drug Abuse Coordinating Council shall have authority to develop its rules of procedure to include the establishment of a committee structure for the approval of funding and other purposes.

(2) Committees shall include without limitation a prevention, education, and treatment committee chaired by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, and a law enforcement committee.

(f) The Arkansas Alcohol and Drug Abuse Coordinating Council shall establish advocacy groups among the business community and youth population of this state.

(g) The Arkansas Alcohol and Drug Abuse Coordinating Council shall work with all federal, state, county, and local law enforcement agencies to ensure an integrated system of enforcement activities.

(h) The Arkansas Alcohol and Drug Abuse Coordinating Council shall perform other functions as may be necessary to carry out the functions, powers, and duties as set forth in this subchapter.

History. Acts 1989, No. 855, §§ 3, 4; 1995, No. 551, §§ 2, 3; 2013, No. 1107, § 41; 2017, No. 497, § 23; 2017, No. 913, § 112; 2019, No. 910, § 6023.

Amendments. The 2019 amendment substituted "Division of Law Enforcement Standards and Training" for "Arkansas Commission on Law Enforcement Standards and Training" in (d).

Subchapter 11 — Task Force on Substance Abuse Prevention

SECTION.

20-64-1101 — 20-64-1103. [Repealed.]

Publisher's Notes. This subchapter, concerning the Task Force on Substance Abuse Prevention, was repealed by Acts 2019, No. 389, § 73, effective July 24, 2019. The subchapter expired by its own terms September 30, 2017, pursuant to identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, §§ 46-48, 127. The subchapter was derived from the following sources:

20-64-1101. Acts 2007, No. 629, § 1; 2016 (3rd Ex. Sess.), No. 2, § 46; 2016 (3rd Ex. Sess.), No. 3, § 46.

20-64-1102. Acts 2007, No. 629, § 1; 2013, No. 1107, § 42; 2016 (3rd Ex. Sess.), No. 2, § 47; 2016 (3rd Ex. Sess.), No. 3, § 47; 2017, No. 913, § 113.

20-64-1103. Acts 2007, No. 629, § 1; 2013, No. 1132, § 40; 2016 (3rd Ex. Sess.), No. 2, § 48; 2016 (3rd Ex. Sess.), No. 3, § 48.

SUBTITLE 5. SOCIAL SERVICES

CHAPTER 76

PUBLIC ASSISTANCE GENERALLY

SUBCHAPTER.

SUBCHAPTER
2. ADMINISTRATION GENERALLY.
4. GRANTS OF ASSISTANCE.
7. DRUG SCREENING AND TESTING ACT OF 2015.
8. EMPLOYMENT OPPORTUNITIES FOR ABLE-BODIED ADULTS ACT OF 2019.

SUBCHAPTER 1 — GENERAL PROVISIONS

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-76-102. Coordination of state agency service delivery.

(a) To ensure that all available state government resources are used to help transitional employment assistance recipients make the transition from welfare to work, each of the following state agencies and organizations shall also be required to work with the Division of Workforce Services in providing transitional employment assistance services:

(1) The Department of Human Services;

(2) The Division of Higher Education, including community colleges and the University of Arkansas Cooperative Extension Service;

(3) The Division of Elementary and Secondary Education;

(4) The Arkansas Development Finance Authority;

(5) The Arkansas Economic Development Council;

(6) The Arkansas Department of Transportation;

(7) The Department of Finance and Administration, including the Office of Child Support Enforcement;

(8) The Adult Learning Alliance, Inc.;

(9) The Adult Education Section; and

(10) Other state agencies as directed by the Governor or as directed by the General Assembly.

(b) State agencies required under subsection (a) of this section to work with the Division of Workforce Services in providing transitional employment assistance services to recipients shall make every effort to use financial resources in their respective budgets and to seek additional funding sources, whether private or federal, to supplement the moneys allocated by the Division of Workforce Services for the Transitional Employment Assistance Program.

(c) All agencies of the state and local governments providing program services shall work cooperatively with and provide any necessary assistance to the General Assembly and the Arkansas Workforce Development Board and shall furnish, in a timely manner, complete and accurate information regarding the program to legislative committees and the board upon request.

History. Acts 1987, No. 184, §§ 14, 15; 1997, No. 1058, § 3; 1999, No. 1567, §§ 4, 5; 2005, No. 1705, § 3; 2007, No. 514, § 1; 2015, No. 907, § 7; 2017, No. 707, § 64; 2017, No. 897, § 14; 2019, No. 910, § 502.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in the introductory language of (a) and twice in (b); substituted "Division of Higher Education" for "Department of Higher Education" in (a)(2); substituted "Division of Elementary and Secondary Education" for "Department of Education" in (a)(3); and substituted "Adult Education Section of the Division of Workforce Services" for "Department of Career Education" in (a)(9).

20-76-106. Statewide implementation plan — Transitional Employment Assistance.

(a) The Division of Workforce Services shall:

(1) Develop a statewide implementation plan for ensuring the cooperation of state agencies and local agencies and encouraging the cooperation of private entities, especially those receiving state funds, in the coordination and implementation of the Transitional Employment Assistance Program, the Arkansas Work Pays Program, and achievement of the goals; and

(2)(A) Ensure that program recipients throughout the state, including those in rural areas, have comparable access to transitional employment assistance benefits.

(B) The statewide implementation plan shall be subject to the review and recommendation of the Arkansas Workforce Development Board.

(b) At a minimum, the transitional employment assistance implementation plan shall include:

(1) Performance standards and measurement criteria for state and county offices of the Department of Human Services, the Division of Workforce Services, and all service providers under the program;

(2) Contract guidelines for contract service providers under the program;

(3) Guidelines for training transitional employment assistance service providers, whether state employees or contract providers;

(4) Functions to be performed by each state agency in helping recipients make the transition from welfare to work;

(5) Guidelines for clarifying or, if necessary, modifying the rules of the state agencies charged with implementing the program so that all unnecessary duplication is eliminated;

(6) Guidelines for modifying compensation and incentive programs for state employees in order to achieve the performance outcomes necessary for successful implementation of the program;

(7) Guidelines for timely assessments for each participant which lead to an individual personal responsibility agreement that identifies the strengths of the participant and the barriers faced in obtaining a job and reaching self-sufficiency and the services to be provided to assist the participant in finding and keeping work and in moving toward self-sufficiency;

(8) Guidelines for timely provision of needed support services as specified in the individual personal responsibility agreement. These guidelines shall include procedures for evaluating the quality and value of assessments and the provision of support services;

(9) Guidelines governing job search requirements for transitional employment assistance applicants;

(10) Guidelines governing the provision of support services to transitional employment assistance participants and former transitional employment assistance participants to assist them in retaining employment and earning higher wages and career advancement;

(11) Guidelines governing the combining of work with education and training;

(12) Guidelines for the independent evaluation of all cases closed due to sanctions or time limits;

(13) A micro-lending program and an individual development trust account demonstration project for program recipients;

(14) Criteria for relocation of program recipients which take into account factors, including, but not limited to, job availability, availability of support services, and proximity of relocation area to current residence;

(15) Criteria for prioritizing work activities of program recipients in the event that funds are projected to be insufficient to support full-time work activities of program recipients. The criteria may include, but not be limited to, priorities based on the following:

(A) At least one (1) adult in each two-parent family shall be assigned priority for full-time work activities;

(B) Among single-parent families, a family that has older preschool children or school-age children shall be assigned priority for work activities;

(C) A recipient who has access to nonsubsidized child care may be assigned priority for work activities; and

(D) Priority may be assigned based on the amount of time remaining until the recipient reaches the applicable time limit for program participation or may be based on requirements of a personal responsibility agreement; and

(16) The development of a performance-based payment structure to be used for all program services which takes into account the degree of difficulty associated with placing a program recipient in a job, the quality of placement with regard to salary, benefits, and opportunities for advancement, and the recipient's retention of the placement. The payment structure should provide, if appropriate, bonus payments to providers that experience notable success in achieving long-term job retention with program recipients.

(c)(1)(A) The division shall prepare a comprehensive annual program report.

(B) The report shall be subject to review and recommendation by the board.

(2) The division shall submit the comprehensive annual program report to the Governor, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor.

(3) The comprehensive annual program report shall contain proposals for measuring and making progress toward the transitional employment assistance outcomes during the succeeding three-year period.

(4) The comprehensive annual program report to the Governor, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor shall include all information that the board deems necessary for determining progress in achieving the outcomes.

(5) Information shall be provided for the state, each employment opportunity district, and each county.

(6) The report shall also include all information requested by resolution of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

(7) This report shall include a copy of all federal monthly, quarterly, and annual reports submitted by the Department of Human Services regarding the Temporary Assistance for Needy Families Program.

(d) The House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor shall report annually to the General Assembly their findings and recommendations regarding the program.

History. Acts 1997, No. 1058, § 4; 1999, No. 1567, § 7; 2001, No. 1264, § 4; 2005, No. 1705, § 7; 2007, No. 514, §§ 3, 4; 2009, No. 415, § 1; 2011, No. 817, § 1; 2015, No. 907, § 9; 2019, No. 910, §§ 503-505.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" throughout the section.

20-76-109. Use of contracts.

The Division of Workforce Services, as appropriate, should provide work activities, training, and other services through contracts. In contracting for work activities, training, or services, the following apply:

(1)(A) A contract shall be performance-based.

(B) Whenever possible, payment shall be tied to performance outcomes that include factors such as, but not limited to, job entry, job entry at a target wage, and job retention, rather than tied to completion of training or education or any other phase of the program participation process;

(2)(A) A contract may include performance-based incentive payments that may vary according to the extent to which the recipient is more difficult to place.

(B)(i) Contract payments may be weighted proportionally to reflect the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment.

(ii) The factors may include the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other factors determined appropriate by the division;

(3) Each contract awarded under the Transitional Employment Assistance Program shall be awarded in accordance with state procurement and contract laws; and

(4)(A) The division may contract with commercial, charitable, or faith-based organizations.

(B) A contract must comply with federal requirements with respect to nondiscrimination and other requirements that safeguard the rights of participants.

(C) Services may be provided under contract, certificate, voucher, or other form of disbursement.

History. Acts 1997, No. 1058, § 4; 2005, No. 1705, § 9; 2019, No. 910, §§ 506, 507.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in the introductory language; and substituted "division" for "department" in (4)(A).

20-76-112. Human Services Workers in the Schools Program.

(a) The Human Services Workers in the Schools Program is established as a collaborative effort among the Division of Children and Family Services, the Arkansas Workforce Development Board, the Division of Elementary and Secondary Education, and local school districts. The Human Services Workers in the Schools Program is designed to help children and families by:

(1) Promoting safety of children and strengthening of families;

(2) Supporting the community's capacity to produce children who are healthy, children who are in supportive, nurturing, and healthy families, and children who succeed in school; and

(3) Promoting the Division of Children and Family Services' family preservation philosophy and family-centered practice.

(b) Upon approval of the board, the Division of Children and Family Services shall enter into contracts with local school districts to provide funding for the maximum number of human services workers.

(c) A human services worker shall have a bachelor's degree or a master's degree in social work or a related field and shall provide the following services according to skills and training:

(1) Crisis intervention;

(2) School conferences and in-service training;

(3) Home visits;

(4) Transportation for family and student group counseling;

(5) Parent training and activities;

(6) Supportive service referrals;

(7) Individualized coping and conflict management skills; and

(8) Assessment of family and student needs.

(d)(1) Funding for human services workers shall be targeted to schools with eighty percent (80%) or more of their children eligible for the Free and Reduced Lunch Program under the National School Lunch Act, 42 U.S.C. § 1751 et seq.

(2) The Division of Elementary and Secondary Education and the Division of Children and Family Services shall develop criteria to prioritize eligibility for the Human Services Workers in the Schools Program.

(e) The Coordinated Health Services Section of the Division of Elementary and Secondary Education shall evaluate the Human Services Workers in the Schools Program annually in coordination with the Division of Children and Family Services, the board, and the local school districts that hold contracts.

(f) A parent or a student has the option to refuse any services recommended under the Human Services Workers in the Schools Program.

History. Acts 2005, No. 2295, § 1; 2007, No. 1050, § 1; 2009, No. 952, § 13; 2011, No. 1228, § 1; 2019, No. 910, § 2300.

Amendments. The 2019 amendment substituted "Division of Elementary and Secondary Education" for "Department of Education" in the introductory language of (a), in (d)(2), and in (e); substituted "Division of Children and Family Services'" for "division's" in (a)(3); and substituted "Division of Children and Family Services" for "division" in (b), (d)(2), and (e).

20-76-113. Promoting outcomes for the Transitional Employment Assistance Program and the Arkansas Work Pays Program.

(a) The administration of the Transitional Employment Assistance Program and the Arkansas Work Pays Program shall focus on promoting the following Transitional Employment Assistance Program outcomes for Transitional Employment Assistance Program recipients and poor families in Arkansas:

(1) Increase the percentage of families who receive appropriate services to move off of Transitional Employment Assistance Program cash assistance into employment and toward self-sufficiency;

(2) Increase the percentage of families who leave Transitional Employment Assistance Program cash assistance due to earnings from work;

(3) Increase earnings of families who leave Transitional Employment Assistance Program cash assistance;

(4) Increase the percentage of parents leaving Transitional Employment Assistance Program cash assistance who stay employed; and

(5) Increase the percentage of former Transitional Employment Assistance Program cash assistance recipients who move out of poverty, including the value of food stamps and the federal Earned Income Tax Credit and child support.

(b) The Division of Workforce Services shall develop and maintain the indicators for the Transitional Employment Assistance Program outcomes listed in subdivisions (a)(1)-(5) of this section, subject to review and approval by the Arkansas Workforce Development Board.

(c)(1) The division shall develop proper targets for each Transitional Employment Assistance Program outcome by July 1 of each year, subject to review and approval by the board.

(2) The division shall review and report on progress in achieving the targets in the comprehensive annual program report.

(3)(A) On the forty-fifth day after the end of the federal fiscal year, the report shall be submitted to the Governor and to the Chair of the House Committee on Public Health, Welfare, and Labor and the Chair of the Senate Committee on Public Health, Welfare, and Labor.

(B) The report shall include comments from the Department of Human Services, the division, and other relevant state agencies about their activities and their progress toward the Transitional Employment Assistance Program outcome targets.

History. Acts 2007, No. 514, § 7; 2011, No. 817, § 2; 2013, No. 1132, § 42; 2015, No. 907, § 10; 2019, No. 910, § 508.

Amendments. The 2019 amendment substituted "Division of Workforce Services" and "division" for "Department of Workforce Services" throughout (b) and (c).

20-76-117. Child support — Supplemental Nutrition Assistance Program.

The Department of Human Services shall require a custodial parent or noncustodial parent to cooperate with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration as a condition of eligibility for the Supplemental Nutrition Assistance Program as authorized under 7 C.F.R. § 273.11, as it existed on January 1, 2019.

History. Acts 2019, No. 1043, § 1.

Subchapter 2 — Administration Generally

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-76-201. Department of Human Services — Powers and duties.

The Department of Human Services shall:

(1) Administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it;

(2) Administer or supervise all child welfare activities in accordance with the rules of the Department of Human Services, including:

(A) The licensing and supervision of private and public childcare agencies and institutions;

(B) The care of dependent, neglected, and delinquent children and children with mental or physical disabilities in foster family homes or in institutions; and

(C) The care and supervision of children placed for adoption;

(3) Enter into reciprocal agreements with public welfare agencies in other states relative to the provisions of relief and assistance to transients and nonresidents and cooperate with other state depart-

ments and with the United States Government in studying labor, health, and public assistance problems involved in transiency;

(4) Administer and make effective the rules governing personnel administration, including the preparation and administration of classification and compensation plans and the method of selection for positions in the Department of Human Services:

(A) Develop performance standards and bonus awards for all positions in the program focused on achieving the outcomes; and

(B) Remove or transfer employees from the program to other responsibilities within the Department of Human Services if they do not meet performance standards;

(5) Carry on research and compile statistics relative to public welfare programs throughout the state, including all phases of dependency, defectiveness, delinquency, and related problems and develop plans in cooperation with other public and private agencies for the prevention as well as the treatment of conditions giving rise to public welfare problems;

(6) Assist other departments, agencies, and institutions of the state and federal governments, when so requested, by performing services in conformity with the purposes of this chapter;

(7) Cooperate with the United States Government in matters of mutual concern pertaining to federally funded programs within the Department of Human Services' purview;

(8) Make reports in the form and containing the information as the United States Government from time to time may require and comply with provisions as the United States Government from time to time may find necessary to assure the correctness and veracity of the reports;

(9) Allocate funds for the purposes and in accordance with the provisions of this chapter and rules as may be prescribed by the Department of Human Services and subject to review and recommendation by the Arkansas Workforce Development Board;

(10) Establish standards of eligibility for assistance developed by the Department of Human Services and subject to review and recommendation by the board;

(11) Receive, administer, disburse, dispose, and account for funds, commodities, equipment, supplies, and any kind of property given, granted, loaned, or advanced to the State of Arkansas for public assistance, public welfare, Social Security, or any other similar purposes;

(12) Make rules and take actions as are necessary or desirable to carry out the provisions of this chapter and that are not inconsistent therewith;

(13) Solicit participation of private organizations, nonprofit organizations, charitable organizations, and institutions of education in the delivery of services and in the enactment and revision of rules;

(14) Employ attorneys to represent the interests of the Department of Human Services; and

(15) Develop and implement automated statewide benefit delivery and information systems to achieve the purposes of this chapter.

History. Acts 1939, No. 280, § 7; A.S.A. 1947, § 83-109; Acts 1995, No. 710, § 6; 1997, No. 1058, § 5; 1999, No. 1567, § 10; 2001, No. 1264, § 6; 2007, No. 514, § 8; 2019, No. 315, §§ 2237-2239.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the introductory language of (2) and (4), and in (12) and (13).

20-76-204. County offices — Powers and duties.

(a) The appropriate division of the Department of Human Services shall have authority to receive, disburse, and account for funds from the division, county, state, or any other source for purposes and plans approved by the division in accordance with the rules established by the division.

(b) The appropriate division is empowered to receive and disburse funds received from the department for general relief purposes. The funds shall be spent and accounted for by the county offices in accordance with the rules and policies of the department pertaining to the granting of assistance and relief.

(c) The appropriate division is authorized to establish a county welfare fund from which fund the county offices are authorized to make such disbursements and expenditures for general relief as may be necessary to carry out the purposes of this act and in accordance with the rules of the department.

History. Acts 1939, No. 280, § 13; A.S.A. 1947, § 83-116; Acts 2019, No. 315, § 2240.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a) and (c); and deleted "regulations" following "rules" in (b).

20-76-207. Political activity.

(a)(1) No officer or employee of the appropriate division of the Department of Human Services or of a county office shall use his or her official authority to influence or permit the use of the program administered by the division or the county offices for the purpose of interfering with an election or affecting the results thereof or for any political purpose.

(2) No officer or employee shall devote his or her office hours, or efforts during office hours, towards any partisan political activity, nor shall any activity be conducted upon the premises of the employee or officer's agency, commission, or board.

(3) Furthermore, no communication, vehicles, stationery, or other material property of the State of Arkansas shall be utilized for any partisan political activities by the officers or employees.

(4) No officer or employee shall conduct himself or herself in such a manner during allowable political activity so as to reflect that his or her position is that of the State of Arkansas, or his or her agency, commission, or board.

(b)(1) Except as noted otherwise in this section or as necessary to meet the requirements of federal law as pertains to employees, no

restrictions shall be imposed upon the political freedoms of an officer or employee.

(2) No officer or employee shall be deprived either of his or her right to vote or expression of opinion as a citizen on political subjects.

(c)(1) No officer or employee shall solicit or receive directly or indirectly any political funds or contributions from other officers or employees of that agency; nor shall any officer or employee be obliged to contribute or render services, assistance, subscriptions, assessments, or contributions for any political purposes.

(2) However, during nonduty hours and away from state premises, an officer or employee may communicate through the mails requests for political support from the public at large which may include officers and employees of the agency.

(d) Any officer or employee of the division or of a county office violating this provision shall be subject to discharge or suspension or such other disciplinary measures as may be provided by the rules of the division.

History. Acts 1939, No. 280, § 16; 1941, No. 274, § 5; 1979, No. 568, § 1; A.S.A. 1947, § 83-119; Acts 2019, No. 315, § 2241.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (d).

20-76-209. Payment of certain contributions and withholdings by Department of Human Services generally.

(a) The appropriate division of the Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Law, the Workers' Compensation Law, § 11-9-101 et seq., and the Division of Workforce Services Law, § 11-10-101 et seq., in all cases wherein the recipient has been determined to be the employer of the provider and, as such, required to withhold an amount from the employee's wage and contribute an amount based upon the wages under the provisions of the above enumerated acts.

(b) The appropriate division shall report, pay, or contribute the amounts from the appropriation for paying grants under the program concerned.

History. Acts 1985, No. 649, § 24; A.S.A. 1947, § 83-102.2; Acts 2019, No. 910, § 509.

Amendments. The 2019 amendment substituted "Division of Workforce Services Law" for "Department of Workforce Services Law" in (a).

20-76-210. Payment of certain contributions and withholdings — Certain nursing home care projects.

(a) The appropriate division of the Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Act, the Workers' Compensation Law, § 11-9-

101 et seq., and the Division of Workforce Services Law, § 11-10-101 et seq., in all cases wherein the homemaker and home health aid trainee is participating in the subsidized employment project to prevent premature nursing home care.

(b) The appropriate division shall report, pay, or contribute the amounts from the appropriation for paying grants under this project.

(c) Beneficiaries or trainees under this program shall not be eligible to participate in the Arkansas Public Employees' Retirement System but shall be entitled to receive sick and vacation leave as provided for state employees.

History. Acts 1985, No. 649, § 37; A.S.A. 1947, § 83-102.3; Acts 2019, No. 910, § 510.

Amendments. The 2019 amendment substituted "Division of Workforce Services Law" for "Department of Workforce Services Law" in (a).

20-76-211. Secretary's office of Department of Human Services — Client Specific Emergency Services Revolving Fund Paying Account.

(a) The Secretary's office of the Department of Human Services shall establish and maintain as a cash fund account the Client Specific Emergency Services Revolving Fund Paying Account consisting of federal grants, aids, cash donations, reimbursements, and state general revenue, not to exceed a daily balance of ten thousand dollars ($10,000), for delivery of immediate care, short-term services, or emergency services to eligible clients.

(b) The account shall be established and maintained in accordance with procedures established by the Chief Fiscal Officer of the State for cash funds and shall be administered under the direction of the Secretary of the Department of Human Services.

History. Acts 1985, No. 772, § 9; 1995, No. 1198, § 64; 1997, No. 1360, § 66; 2017, No. 913, § 2; 2019, No. 910, § 5216.

Amendments. The 2019 amendment substituted "Secretary's office" for "Director's office" in the section heading and in (a); and substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (b).

20-76-212. Reimbursement rate to providers — Arkansas Medicaid Program.

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the department, nor shall it adopt any other rule or amendment to the Arkansas Medicaid Program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1992 (2nd Ex. Sess.), No. 3, § 3; 2019, No. 315, § 2242.

Amendments. The 2019 amendment deleted "regulation" following "rule".

20-76-214. Payment of certain contributions and withholdings — Transitional employment assistance.

(a) The Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Act, the Workers' Compensation Law, § 11-9-101 et seq., the Division of Workforce Services Law, § 11-10-101 et seq., and private medical insurance premiums for eligible individuals where that is necessary to achieve employment assistance.

(b)(1) Transitional employment assistance recipients shall not be deemed to be state employees solely as a consequence of receiving transitional employment assistance benefits and shall not be eligible to participate in the Arkansas Public Employees' Retirement System solely as a consequence of receiving transitional employment assistance benefits.

(2) Transitional employment assistance recipients who are employed by the state shall be eligible for the same benefits as an employee who performs similar work and is not a transitional employment assistance recipient.

History. Acts 1997, No. 1058, § 7; 2019, No. 910, § 511.

Amendments. The 2019 amendment substituted "Division of Workforce Services Law" for "Department of Workforce Services Law" in (a).

Subchapter 4 — Grants of Assistance

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and

operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-76-401. Eligibility generally — Transitional Employment Assistance Program.

(a)(1) The Transitional Employment Assistance Program is created.

(2)(A) The Transitional Employment Assistance Program shall be administered by the Department of Human Services and the Division of Workforce Services.

(B) Subject to the order of the Governor, the division may take full authority for administering the Transitional Employment Assistance Program.

(C) The division may contract with the department for administrative services.

(3) The division may operate a separate Transitional Employment Assistance Program Two-Parent Program funded by state funds not claimed for the federal Temporary Assistance for Needy Families program maintenance of effort requirement if the Director of the Division of Workforce Services deems such action necessary to avoid the risk of not meeting the two-parent work participation rate.

(b) Eligibility for transitional employment assistance is limited to applicants for or recipients of assistance who:

(1) Are income and resource eligible; and

(2) Sign and comply with a personal responsibility agreement.

(c) The department shall promulgate rules to determine resource eligibility and benefit levels for participating families. The rules shall be subject to review and recommendation by the Arkansas Workforce Development Board and shall include, but not be limited to, the following categories of income and resource disregards:

(1) To reward work, earned income from sources other than transitional employment assistance;

(2) A certain percentage of a family's gross monthly income;

(3) The family's homestead;

(4) An operable motor vehicle per family;

(5) Household and personal goods;

(6) Income-producing property;

(7) Moneys deposited into an approved individual development account or approved escrow account for business or career development;

(8) Any other property or resource specified in the transitional employment assistance implementation plan which is determined to be cost efficient to exclude or which must be excluded due to federal or state law; and

(9) Any investment earmarked for retirement or education, such as a retirement plan authorized by section 401(k) or section 529 of the Internal Revenue Code of 1986, as it existed on January 1, 2007.

(d) Any person who makes an application for assistance shall have the burden of proving eligibility for the assistance.

History. Acts 1939, No. 280, § 18; 1951, No. 229, § 1; 1953, No. 177, § 1; 1959, No. 301, § 1; A.S.A. 1947, §§ 83-123 — 83-123.2; Acts 1997, No. 1058, § 8; 1999, No. 1567, § 11; 2003, No. 1473, § 43; 2005, No. 1705, § 11; 2007, No. 514, § 10; 2019, No. 315, § 2243; 2019, No. 910, § 512.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" twice in the introductory language of (c).

The 2019 amendment by No. 910 substituted "Division of Workforce Services" for "Department of Workforce Services" throughout (a)(2) and (a)(3).

20-76-402. Work activities — Definitions.

(a) The Division of Workforce Services shall develop and describe categories of approved work activities for transitional employment assistance recipients in accordance with this section. The rules shall be subject to review and recommendation by the Arkansas Workforce Development Board. Approved work activities may include unsubsidized employment, subsidized private sector employment, subsidized public sector employment, education or training, vocational educational training, skills training, job search and job readiness assistance, on-the-job training, micro enterprise, community service, and work experience. For purposes of this section:

(1) "Unsubsidized employment" is full-time employment or part-time employment that is not directly supplemented by federal or state funds;

(2)(A) "Subsidized private sector employment" is employment in a private for-profit enterprise or a private not-for-profit enterprise which is directly supplemented by federal or state funds. A program recipient in subsidized private sector employment shall be eligible for the same benefits as a nonsubsidized employee who performs similar work. Before receiving any subsidy or incentive, an employer shall enter into a written contract with the division which may include, but not be limited to, provisions addressing any of the following:

(i) Payment schedules for any subsidy or incentive such as deferred payments based on retention of the recipient in employment;

(ii) Durational requirements for the employer to retain the recipient in employment;

(iii) Training to be provided to the recipient by the employer;

(iv) Contributions, if any, made to the recipient's individual development account; and

(v) Weighting of incentive payments proportionally to the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment. In establishing incentive payments, the division shall consider the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other appropriate factors.

(B) The division may require an employer to repay some or all of a subsidy or incentive previously paid to an employer under the program unless the recipient is terminated for cause;

(3)(A) "Subsidized public sector employment" is employment by an agency of the federal, state, or local government which is directly supplemented by federal or state funds. A program recipient in subsidized public sector employment shall be eligible for the same benefits as a nonsubsidized employee who performs similar work. Before receiving any subsidy or incentive, an employer shall enter into a written contract with the division that may include, but not be limited to, provisions addressing any of the following:

(i) Payment schedules for any subsidy or incentive such as deferred payments based on retention of the recipient in employment;

(ii) Durational requirements for the employer to retain the recipient in employment;

(iii) Training to be provided to the recipient by the employer;

(iv) Contributions, if any, made to the recipient's individual development account; and

(v) Weighting of incentive payments proportionally to the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment. In establishing incentive payments, the division shall consider the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other appropriate factors.

(B) The division may require an employer to repay some or all of a subsidy and incentive previously paid to an employer under the program unless the recipient is terminated for cause;

(4) "Work experience" is job-training experience at a supervised public or private not-for-profit agency or organization or with a private for-profit employer which is linked to education or training and substantially enhances a recipient's employability. Work experience may include work study, training-related practicums, and internships;

(5) "Job search assistance" may include supervised or unsupervised job-seeking activities. Job readiness assistance provides support for job-seeking activities, which may include:

(A) Orientation in the world of work and basic job-seeking and job-retention skills;

(B) Instruction in completing an application for employment and writing a resume;

(C) Instruction in conducting oneself during a job interview, including appropriate dress;

(D) Providing a recipient with access to an employment resource center that contains job listings, telephones, facsimile machines, typewriters, and word processors; and

(E) Preparation to seek or obtain employment, including life skills and literacy training, and substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable;

(6) "Education" includes elementary and secondary education, education to obtain the equivalent of a high school diploma, and education to learn English as a second language. In consultation with adult education or rehabilitative services, a person with a high school diploma or the equivalent who tests at less than a working functioning level shall be eligible to participate in basic remedial or adult education. If an individual does not have a high school diploma or equivalency, "education" also includes basic remedial education and adult education;

(7) "Vocational educational training" is postsecondary education, including, at least, programs at two-year or four-year colleges, universities, technical institutes, and vocational schools or training in a field directly related to a specific occupation;

(8) Job skills training directly related to employment provides job skills training in a specific occupation. Job skills training may include customized training designed to meet the needs of a specific employer or a specific industry;

(9) "On-the-job training" means training and work experience at a public or private not-for-profit agency or organization or with a private for-profit employer which provides an opportunity to obtain training and job supervision and provides employment upon satisfactory completion of training;

(10) School attendance at a high school or attendance at a program designed to prepare the recipient to receive a high school equivalency diploma is a required program activity for each recipient eighteen (18) years of age or younger who:

(A) Has not completed high school or obtained a high school equivalency diploma;

(B) Is a dependent child or a head of household; and

(C) For whom it has not been determined that another program activity is more appropriate;

(11) Participation in medical, educational, counseling, and other services that are part of the recipient's personal responsibility agreement is a required activity for each teen parent who participates in the Transitional Employment Assistance Program; and

(12) "Community service" is time spent engaged in an approved activity at a government entity or community-based, charitable organization.

(b) All occupational training shall meet at least one (1) of the following requirements:

(1) Be on the statewide or appropriate area list of occupations in the Guide to Educational Training Programs for Demand Occupations published by the division;

(2) Be on that list for another area within the state to which the Transitional Employment Assistance Program recipient has signed a commitment to relocate;

(3) Be for a specific position for which an employer has submitted a letter demonstrating intent to hire persons upon successful completion of training; and

(4) Be in an occupation in local demand but not shown on the state or area demand list if the local demand is documented or will be documented by the area workforce development board through a state-prescribed methodology.

(c) Each state agency and each entity that contracts to provide services for a state agency shall establish recruitment and hiring goals which shall target ten percent (10%) of all jobs requiring a high school diploma or less to be filled with transitional employment assistance or food stamp recipients.

(d)(1) The division shall require participation in approved work activities to the maximum extent possible, subject to federal and state funding. If funds are projected to be insufficient to support full-time work activities by all program recipients who are required to participate in work activities, the division shall screen recipients and assign priority in accordance with the implementation plan.

(2) In accordance with the implementation plan, the division may limit a recipient's weekly work requirement to the minimum required to meet federal work activity requirements and may develop screening and prioritization procedures within employment opportunity districts or within counties based on the allocation of resources, the availability of community resources, or the work activity needs of the employment opportunity district or county.

(e)(1) Subject to subdivision (e)(2) of this section, an adult in a family receiving assistance under the program may fill a vacant employment position in order to engage in a work activity described in subsection (a) of this section.

(2) No adult in a work activity described in subsection (a) of this section which is funded, in whole or in part, by funds provided by the United States Government shall be employed or assigned:

(A) When any other individual is on layoff from the same or any substantially equivalent job; or

(B) If the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its workforce in order to fill the vacancy so created with an adult described in subdivision (e)(1) of this section.

(3) The division shall establish and maintain a grievance procedure for resolving complaints of alleged violations of subdivision (e)(2) of this section.

(4) Nothing in this subsection shall preempt or supersede any provision of state or local law that provides greater protection for employees from displacement.

(f) The division, subject to review and recommendation by the board, shall establish criteria to exempt or temporarily defer the following persons from any work activity requirement:

(1) An individual required to care for a recipient child until the child reaches twelve (12) months of age, if the caregiver is an active participant in a home-based or part-time center-based quality-approved early learning program, where available, that requires parental in-

volvement and is approved by the Department of Education under the Arkansas Better Chance Program Act, § 6-45-101 et seq.;

(2) An individual required to care for a recipient child until the child reaches the maximum age specified by rule, not to exceed twelve (12) months of age;

(3) A parent or caregiver with a disability, based upon criteria set forth in rules;

(4) A woman in the third trimester of pregnancy;

(5) A parent or caregiver who is caring for a child relative with a disability or an adult relative with a disability, based upon criteria set forth in rules;

(6) A minor parent less than eighteen (18) years of age who resides in the home of a parent or in an approved adult-supervised setting and who participates in full-time education or training;

(7) A teen parent head of household under twenty (20) years of age who maintains satisfactory attendance as a full-time student at a secondary school;

(8) An individual for whom support services necessary to engage in a work activity are not available;

(9) An individual who, as determined by a division case manager, is unable to participate in work activities due directly to the effects of domestic violence. All case manager determinations made under this subdivision (f)(9) shall be reviewed by a supervisor within five (5) days of such determination;

(10) An individual unable to participate in a work activity due to extraordinary circumstances;

(11) A parent or caregiver over sixty (60) years of age; and

(12) Child-only cases.

History. Acts 1979, No. 667, §§ 1-3; A.S.A. 1947, §§ 83-123.3 — 83-123.5; Acts 1997, No. 1058, § 9; 1999, No. 1567, § 12; 2003, No. 1306, § 5; 2005, No. 1705, § 12; 2007, No. 514, § 10; 2015, No. 907, § 11; 2019, No. 315, §§ 2244, 2245; 2019, No. 910, §§ 513-524.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (f)(2) and "rules" for "regulations" in (f)(3) and (f)(5).

The 2019 amendment by No. 910 substituted "Division of Workforce Services" for "Department of Workforce Services" throughout the section.

20-76-404. Duration of assistance — Extended support services.

(a)(1) The Division of Workforce Services shall not provide financial assistance to a family that includes an adult recipient who has received financial assistance for more than twenty-four (24) months, except as provided in subsection (c) of this section.

(2) The number of months need not be consecutive and shall include the time a recipient receives financial assistance from another state.

(3) The division may by rule establish other limitations on the receipt of financial assistance not inconsistent with state or federal law.

(b)(1) The division shall certify to the Governor, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on

Public Health, Welfare, and Labor when the support services necessary for program recipients to obtain employment or participate in allowable work activities are available.

(2) The division may certify subsets of program recipients, including without limitation recipients in a certain geographical area or employment opportunity district or program recipients with a high school diploma or high school equivalency diploma approved by the Adult Education Section.

(3) Before implementing the twenty-four-month cumulative limit on financial assistance, the division shall notify program recipients by direct mail or contact and by other means reasonably calculated to reach to current and potential program recipients, including, but not limited to, the posting of notices in county offices.

(c) The division shall exempt or temporarily defer within thirty (30) calendar days the following persons from the twenty-four-month cumulative limit on financial assistance:

(1) An individual, as determined by a division case manager, who cooperated and participated in activities, but was unable to obtain employment because of circumstances or barriers beyond his or her control;

(2) Child-only cases;

(3) An individual unable to obtain employment because of the lack of support services necessary to overcome barriers to employment;

(4) A parent or caregiver over sixty (60) years of age;

(5) A parent or caregiver who is caring for a disabled child relative or disabled adult relative, based upon criteria set forth in division rules;

(6) A disabled parent or caregiver, based upon criteria set forth in division rules;

(7) A parent less than eighteen (18) years of age who resides in the home of a parent or in an approved adult-supervised setting and who participates in full-time education or training;

(8) An individual, who as determined by a division case manager, is unable to obtain employment due directly to the effects of domestic violence. All case manager determinations made under this subdivision (c)(8) shall be reviewed by a supervisor within five (5) days of the determination;

(9) Other individuals as determined by the division, including, but not limited to, a child when necessary to protect the child from the risk of neglect, as defined by § 12-18-103(14); and

(10) Individuals participating in education and training activities who have reached the end of their twenty-four-month cumulative limit on financial assistance, have complied with all transitional employment assistance rules, are making satisfactory academic progress as determined by the academic institution or training program in which the individual is currently enrolled, and are expected to complete the requirements for the education or training program within a reasonable period of time as defined in rules issued by the division.

(d)(1) No months shall be counted toward a person's twenty-four-month cumulative limit on financial assistance while he or she is receiving a deferral or exemption.

(2) There shall be no limit on the length or the number of deferrals or exemptions granted each person as long as the person meets any of the criteria outlined in subsection (c) of this section.

(3) The division shall periodically review each case to determine whether the person still meets any of the criteria outlined in subsection (c) of this section.

(4)(A) The division shall carry out an enhanced review of all cases six (6) months before the expiration of the time limit.

(B) The review shall assess the barriers that remain to the adult or adults in the case obtaining employment, what enhanced services can be provided to enable him or her to obtain employment, and whether the case should be given a six-month extension or be exempted from the time limit.

(C) The division shall make every reasonable effort to deliver the available services identified in subdivision (d)(4)(B) of this section.

(D) The division shall grant an extension at the time for review if the client meets one (1) of the grounds for extension.

(E) The division shall carry out a further review at the end of the extension period.

(e)(1) A recipient who was eligible for Medicaid and loses his or her financial assistance due to earnings and whose income remains below one hundred eighty-five percent (185%) of the federal poverty level shall remain eligible for transitional Medicaid without reapplication during the immediately succeeding twelve-month period if private medical insurance is unavailable from the employer.

(2) A recipient who loses his or her financial assistance due to earnings and who is employed shall be eligible for:

(A) Childcare assistance at no cost and without reapplication for a cumulative period of twelve (12) months; and

(B) Twenty-four (24) additional months of childcare assistance provided on a sliding fee scale or other cost-sharing arrangement as determined by the division.

(3) The division may reduce the period of transitional child care to a total of twenty-four (24) months for recipients who lose assistance at a specified date after the division's decision to limit the assistance if the division certifies to the Governor and the Chief Fiscal Officer of the State that the reduction is necessary to avoid overspending the biennial budget for child care.

(4) The transitional childcare assistance available to former recipients shall not exceed the cumulative number of months provided under subdivisions (e)(2) and (3) of this section, regardless of whether the former recipient reenters the Transitional Employment Assistance Program.

(f)(1) The division shall deny Medicaid, childcare, and transportation assistance during the twelve-month period for any month in which the recipient's family does not include a dependent child.

(2) The division shall notify the recipient of transitional Medicaid, childcare, and transportation assistance when the recipient is notified of the termination of cash assistance. The notice shall include a description of the circumstances in which the transitional Medicaid and childcare assistance may be terminated.

(g)(1) In order to assist current and former program recipients in continuing training and upgrading skills, transitional education or training may be provided to a recipient for up to one (1) year after the recipient is no longer eligible to participate in the program due to employment earnings.

(2) Education or training resources available in the community at no additional cost to the division shall be used whenever possible.

(3) Transitional education or training shall be employment-related and may include education or training to improve a recipient's job skills in the recipient's existing area of employment or may include education or training to prepare a recipient for employment in another occupation.

(4) The division may enter into an agreement with an employer to share the costs relating to upgrading the skills of recipients hired by the employer.

(h) Other extended support services may be available to recipients no longer eligible for financial assistance under transitional employment assistance.

(i)(1) By August 1, 2001, the division shall develop a plan, subject to review and recommendation by the Arkansas Workforce Development Board, to monitor and protect the safety and well-being of the children within a family whose temporary assistance is terminated for any reason other than the family's successful transition to economic self-sufficiency.

(2)(A) Actions required by the plan shall include at least one (1) home visit with the parents and children.

(B) Every reasonable effort shall be made to make contact with all families, including visits during evenings and on weekends.

(C) The first home visit shall occur within six (6) months after the termination of cash assistance.

(D) The purposes of the home visits shall include checking on the well-being of children in those families and determining whether the families need available services.

(3) The division may contract with other state agencies, private companies, local government agencies, or community organizations for the conducting of these visits.

(4) The board shall submit a report to the Governor and the Chair of the House Committee on Public Health, Welfare, and Labor and the Chair of the Senate Committee on Public Health, Welfare, and Labor that reports on the outcomes of the home visits and provides separate information for families who left transitional assistance due to noncompliance and time limits.

(j) As part of the home visits, families shall be informed about the availability of Medicaid and ARKids First, food stamps, child care,

housing assistance, any other supportive services offered by the division or the Department of Health designed to help meet the basic needs and well-being of children, federal and state earned income tax credits, individual development accounts, employment counseling services, and education and training opportunities designed to increase the future earnings and employment prospects of clients.

History. Acts 1953, No. 231, § 7; A.S.A. 1947, § 83-129.1; Acts 1997, No. 1058, § 11; 1999, No. 1567, § 13; 2001, No. 1264, §§ 7, 8; 2007, No. 514, §§ 11-13; 2009, No. 758, § 27; 2015, No. 1115, § 27; 2019, No. 315, §§ 2246-2248; 2019, No. 910, § 525.

Amendments. The 2019 amendment by No. 315 substituted "rule" for "regulation" in (a)(3); and substituted "rules" for "regulations" in (c)(5), (c)(6), and twice in (c)(10).

The 2019 amendment by No. 910 substituted "Division of Workforce Services" for "Department of Workforce Services" throughout the section; deleted "Beginning July 1, 1998" at the beginning of (a)(1); and substituted "Adult Education Section" for "Department of Career Education" in (b)(2).

20-76-405. Diversion from assistance.

(a) When an applicant applies for employment assistance, the Department of Human Services shall determine whether the applicant is eligible to be diverted from receiving employment assistance. That determination shall be based on an assessment conducted in conformity with rules promulgated by the department.

(b) The department shall determine eligibility for diversion from assistance by considering whether but for the diversion from assistance the applicant would receive employment assistance. If the department determines that the applicant is eligible for diversion from assistance and the recipient agrees to the diversion, the department may provide a single loan payment of up to the amount of financial assistance that the applicant could receive during three (3) months if not diverted.

(c) An applicant may receive diversion loan assistance only one (1) time. Receipt of diversion loan assistance shall be accompanied by a written declaration by the recipient electing to forego transitional employment assistance financial assistance for one hundred (100) days as a condition of receiving the diversion loan assistance.

(d) A diversion from assistance is in lieu of other services described in this chapter.

History. Acts 1939, No. 280, § 24; A.S.A. 1947, § 83-130; Acts 1997, No. 1058, § 12; 2019, No. 315, § 2249.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the second sentence of (a).

20-76-410. Administrative sanctions — Transitional employment assistance.

(a) A reduction in financial assistance or case closure shall be imposed in the following situations:

(1) The individual fails without good cause to cooperate with the Office of Child Support Enforcement;

(2) The individual refuses to accept employment without good cause;

(3) The individual quits employment without good cause;

(4) The individual fails without good cause to comply with the provisions of the employment plan;

(5) The individual fails without good cause to comply with the provisions of the personal responsibility agreement; or

(6) The individual flees prosecution or custody or confinement following conviction or is in violation of the terms or conditions of parole or probation.

(b) The Division of Workforce Services may define by rule additional situations that require sanction, establish additional sanctions, and provide for administrative disqualification.

(c)(1) If a parent fails to comply with the Transitional Employment Assistance Program requirements, financial assistance for the child or children may be continued under subdivisions (a)(1)-(5) of this section, and the division shall suspend the family's assistance for one (1) month.

(2)(A) During the thirty (30) days after suspension of benefits, the division shall make strong efforts to arrange a face-to-face meeting with the parent, including a home visit to the family if necessary.

(B) In the face-to-face meeting, the division shall explain:

(i) The reason that the family has been found to be noncompliant;

(ii) The penalty that will be imposed; and

(iii) The opportunity to correct that noncompliance and avoid the penalty.

(C) The division shall also seek to determine the well-being of the child or children and whether additional services or actions are required to protect the well-being of the child or children.

(D) If the parent comes into compliance within fifteen (15) business days after the face-to-face meeting and maintains compliance for two (2) weeks, the suspended benefits shall be paid to the family.

(3) If the parent fails to come into compliance during the period of suspended benefits, the family's financial assistance may be reduced by up to twenty-five percent (25%) for the next three (3) months if noncompliance continues.

(4) If the parent's noncompliance continues after the fourth month, the division shall suspend the family's financial assistance for two (2) months.

(5)(A) During the thirty (30) days after suspension of benefits, the division shall make strong efforts to arrange a face-to-face meeting with the parent, including a home visit to the family if necessary.

(B) In the face-to-face meeting, the division shall explain:

(i) The reason that the family has been found to be noncompliant;

(ii) The penalty that will be imposed; and

(iii) The opportunity to correct that noncompliance and avoid the penalty.

(C) The division shall also seek to determine the well-being of the child or children and whether additional services or actions are required to protect the well-being of the child or children.

(D) If the parent comes into compliance within fifteen (15) business days and maintains compliance for two (2) weeks, the suspended benefits shall be paid to the parent.

(E) If the parent fails to come into compliance during the second period of suspended benefits, the family's financial assistance may be reduced by up to fifty percent (50%) for the next three (3) months, if noncompliance continues.

(F) Months during which cash assistance benefits are suspended shall not count toward the family's twenty-four-month limit on receiving Transitional Employment Assistance Program assistance.

(G) The Transitional Employment Assistance Program cash assistance case shall be closed if noncompliance continues after the end of the period under this subdivision (c)(5).

(6) The division shall arrange a home visit with the family during the last month of the sanction to determine the well-being of the child or children and to determine whether additional services are required to protect the well-being of the child or children.

(7) Medicaid and food stamp benefits shall be continued without need for reapplication if the family is being sanctioned and for as long as the family remains eligible under the requirements of those programs.

(8) Division staff may contract with other state agencies, local coalitions, or appropriate community organizations to carry out the strong efforts to communicate with families facing sanction and to conduct the face-to-face meetings and home visits specified in this section.

(d) Beginning after July 27, 2011, the division shall include in the comprehensive annual program report information on the families sanctioned and the outcomes of the home visits to the Governor and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

(e) When appropriate, protective payees may be designated by the division and may include:

(1) A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interests of the child or children;

(2) A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interests of the child or children; or

(3) A volunteer or member of an organization who agrees in writing to utilize the assistance in the best interests of the child or children.

(f)(1) If it is in the best interest of the child or children, as determined by the division, for the staff member of a private agency, a public agency, the division, or any other appropriate organization to serve as a protective payee, the designation may be made.

(2) However, a protective payee shall not be any individual involved in determining eligibility for assistance for the family, staff handling any fiscal pressures related to the issuance of assistance, or landlords,

grocers, or vendors of goods, services, or items dealing directly with the recipient.

History. Acts 1939, No. 280, § 21; 1953, No. 177, § 3; 1957, No. 314, § 1; 1965 (1st Ex. Sess.), No. 34, § 2; 1965 (2nd Ex. Sess.), No. 14, § 3; 1967, No. 374, § 3; 1983, No. 780, §§ 1, 2; A.S.A. 1947, §§ 83-127 — 83-127.2; Acts 1997, No. 1058, § 17; 1999, No. 1567, § 15; 2001, No. 1264, § 9; 2005, No. 1705, § 14; 2007, No. 514, § 15; 2011, No. 817, § 3; 2013, No. 1132, §§ 43, 44; 2019, No. 910, § 526.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (b); and substituted "division" for "department" throughout (c) through (f).

20-76-419. Blind persons generally.

(a) Assistance grants shall be given under this act to any person who:

(1) Has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential;

(2) Is sixteen (16) years of age or over; and

(3) Is not receiving any other type of assistance grant.

(b) The appropriate division of the Department of Human Services shall:

(1) Promulgate rules, in terms of ophthalmic measurements, to determine the amount of visual acuity which an applicant may have and still be eligible for assistance grants under this act;

(2) Designate a suitable number of ophthalmologists and optometrists, licensed to practice in Arkansas and actively engaged in the practice of their respective professions, to examine applicants and recipients of assistance grants to the blind;

(3) Fix and pay to ophthalmologists and optometrists fees for examination of applicants; and

(4) Develop or cooperate with other agencies in developing measures for the prevention of blindness, the restoration of eyesight, and the vocational adjustment of blind persons.

(c)(1) No applications shall be approved until the applicant has been examined by an ophthalmologist or optometrist, whichever the individual may select, designated or approved by the division to make the examination.

(2) The examining ophthalmologist or optometrist shall certify in writing upon forms provided by the division the findings of the examination.

(3) The recipient shall submit to a reexamination as to his or her eyesight when required to do so by the division.

(d)(1) The amount of the assistance grants shall be determined in accordance with subdivision (d)(2) of this section, except that in determining need, the division shall disregard the first eighty-five dollars ($85.00) per month of earned income, and where earned income has been disregarded in determining the need of a person receiving aid to the blind, the earned income so disregarded shall be disregarded in determining the need of any other individual for old age assistance, aid

to the families of dependent children, aid to the blind, and aid to the permanently and totally disabled.

(2)(A) The appropriate division of the Department of Human Services shall determine the amount of assistance grants which any person shall receive with due regard to the resources and necessary expenditures of the case, the conditions existing in each case and in accordance with the rules made by the division.

(B) This amount shall be sufficient, when added to all other income and support available to the recipient, to provide the person with a reasonable subsistence compatible with decency and health.

(3) The assistance grants shall be in the form of money payments to blind persons in need.

(e) On the basis of the findings of the ophthalmologist's examination as provided for in this act, supplementary services may be provided by the division to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his or her eyesight whether or not he or she is blind as defined in this act or rules of the division, if he or she is otherwise qualified for assistance grants under this act. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the division.

History. Acts 1939, No. 280, § 22; 1951, No. 308, § 1; 1953, No. 177, § 4; 1961, No. 58, § 1; 1961, No. 257, § 1; 1963, No. 8, § 1; 1965 (1st Ex. Sess.), No. 34, § 3; 1965 (2nd Ex. Sess.), No. 14, § 4; 1967, No. 374, § 4; A.S.A. 1947, § 83-128; Acts 2019, No. 315, §§ 2250, 2251; 2019, No. 389, § 74.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b)(1) and the first sentence of (e).

The 2019 amendment by No. 389 added the (d)(1) designation; substituted "subdivision (d)(2) of this section" for "the provisions of § 20-76-407" in (d)(1); inserted (d)(2); and added the (d)(3) designation.

20-76-422. [Repealed.]

Publisher's Notes. This section, concerning conversion from state to federal programs of cash assistance for the aged, blind, and disabled, was repealed by Acts 2019, No. 910, § 5217, effective July 1, 2019. The section was derived from Acts 1985, No. 649, § 30; A.S.A. 1947, § 83-128.6.

20-76-431. Transfer of property prohibited.

(a) No person shall, at any time during the continuance of assistance, grant, sell, transfer title, or in any way dispose of any real property without the consent of the appropriate division of the Department of Human Services. If a recipient of assistance executes and delivers a deed to real property without the consent of the division, the transaction shall be deemed prima facie fraudulent as to the division.

(b) To overcome the presumption of fraud, an immediate investigation will be made to determine whether the property was transferred within the rules of the division. The fair market value of the transferred

property shall be considered as available toward meeting the needs of the recipient.

History. Acts 1939, No. 280, § 28; 1953, No. 177, § 6; A.S.A. 1947, § 83-134; Acts 2019, No. 315, § 2252.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the first sentence of (b).

20-76-433. Records — Confidentiality.

(a)(1)(A) Records identifying persons participating in programs administered by the Department of Human Services may be disclosed only as expressly authorized by law or regulation creating or implementing the programs.

(B) The rulemaking power of the Department of Human Services shall include the power to establish and enforce reasonable rules governing the custody, use, and preservation of the records, papers, files, and departmental communications.

(2)(A)(i) The various executive departments and agencies of the state shall exchange information as necessary for each department and agency to accomplish objectives and fulfill obligations created or imposed by federal or state law.

(ii) The various executive departments and agencies of the state shall execute operating agreements to facilitate the exchanges of information authorized by this chapter.

(B) Information received pursuant to this chapter shall be maintained by persons with a business need to access the information and shall be further disclosed only in accordance with any confidentiality provisions applicable to the department or agency originating the information.

(b) Except for purposes directly connected with the administration of public assistance and in accordance with the rules of the Department of Human Services, it shall be unlawful for any person or persons to solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of any list of or names of or any information concerning persons applying for or receiving assistance directly or indirectly derived from the records, papers, files, or communications of the Department of Human Services or acquired in the course of the performance of official duties.

(c) Any person violating the provisions of this section or any rules promulgated under the power hereof shall upon conviction be deemed guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100) or confined in the county jail for not less than ten (10) days nor more than sixty (60) days or shall be subjected to both a fine and jail sentence.

History. Acts 1939, No. 280, § 32; 1941, No. 274, § 6; A.S.A. 1947, § 83-138; Acts 1997, No. 1058, § 22; 2019, No. 315, §§ 2253, 2254.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a)(1)(B) and (b).

20-76-437. Reporting — Transitional employment assistance.

The Department of Human Services, the Division of Workforce Services, the Department of Health, the Division of Elementary and Secondary Education, the Division of Higher Education, the Adult Education Section, the Arkansas Development Finance Authority, the Arkansas Economic Development Council, and the Arkansas Department of Transportation shall report periodically to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor regarding the provision of services to Transitional Employment Assistance Program recipients.

History. Acts 1997, No. 1058, § 17; 1999, No. 1567, § 17; 2017, No. 707, § 65; 2019, No. 910, § 527.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services"; substituted "Division of Elementary and Secondary Education, the Division of Higher Education, the Adult Education Section" for "Department of Education, the Department of Higher Education, the Department of Career Education"; and made a stylistic change.

20-76-438. Purpose.

(a)(1) The General Assembly finds that it is important that all families in this state be strong and economically self-sufficient and that it is in the public interest that:

(A) Eligible persons and families of lesser means be given time-limited cash assistance along with an opportunity to obtain and retain employment that is sufficient to sustain their families;

(B) As a part of this transition from welfare to work, it is in the public's interest that various supportive services and, in some cases, education and training be offered to these families to enable them to make this transition;

(C) Education and training are essential to long-term career development and self-sufficiency; and

(D) Employment improves the quality of life for parents and children by increasing family income and assets and by improving self-esteem.

(2) Therefore, it is in the public interest that our state provide time-limited cash assistance and supportive services to our most vulnerable citizens and their children.

(b)(1) The General Assembly also finds that:

(A) Currently there are inefficiencies and duplication of effort on the part of the Division of Workforce Services and the Department of Human Services in the administration of the Transitional Employment Assistance Program; and

(B) A different division of responsibility for administration of the Transitional Employment Assistance Program by the division and the Department of Human Services may result in the more efficient and effective administration of the Transitional Employment Assistance Program.

(2) Therefore, it is in the public interest that the General Assembly authorize the division to:

(A) Receive the Temporary Assistance for Needy Families block grant from the United States Department of Health and Human Services for the administration of all Temporary Assistance for Needy Families-funded programs in Arkansas;

(B) Expend the Temporary Assistance for Needy Families block grant funds subject to the appropriations of the General Assembly;

(C) Provide all employment-related services for time-limited Transitional Employment Assistance Program clients;

(D) Contract with other state agencies or other providers to deliver services in Temporary Assistance for Needy Families-funded programs; and

(E) Prepare and submit any Temporary Assistance for Needy Families renewal plans that are required in § 402 of the Social Security Act, 42 U.S.C. § 651 et seq.

History. Acts 1999, No. 1567, § 1; 2005, No. 1705, § 15; 2007, No. 514, § 16; 2009, No. 952, § 14; 2013, No. 1132, § 45; 2019, No. 910, §§ 528, 529.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (b)(1)(A), (b)(1)(B), and the introductory language of (b)(2).

20-76-439. Self-sufficiency — Assessments, personal responsibility agreements, and supportive services.

(a)(1) At the time of application for transitional employment assistance, the Department of Human Services and the applicant shall sign a personal responsibility agreement.

(2) An applicant shall not be required to engage in job search activities if the applicant does not have available childcare and transportation services.

(b)(1) Within thirty (30) calendar days after an application for transitional employment assistance has been approved, the department shall conduct an in-depth assessment of the functional educational level, skills, prior work experience, and employability of the participant.

(2) The department shall utilize testing instruments which shall yield education levels, skill levels, work readiness, and employability of the participant.

(3)(A) The assessment shall identify barriers to immediate employment as well as barriers that may prevent the participant from increasing his or her long-term earnings and from taking advantage of opportunities for employment advancement.

(B) The barriers to be assessed shall include, at least, domestic violence, substance abuse, learning disabilities, and unmet client needs for supportive services such as child care, transportation, assistance with job-related expenses, housing, health care, job readiness preparation, and education and training.

(c) The department shall inform the participant of supportive services that may be available to alleviate barriers to employment and increase long-term earnings and opportunities for employment advancement.

(d) After the skills assessment has been completed and the participant has been informed about the availability of supportive services, the department shall work with the participant to develop an individual employment plan that:

(1) Sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) Is designed to the greatest extent possible to move the participant into employment, help the participant maintain employment, and increase the participant's long-term earnings and opportunities for employment advancement;

(3) Makes education and training a priority of allowable work activities, subject to federal work participation requirements and taking into account the caseload reduction credit, when the assessment warrants that education and training are the best means to achieving long-term economic self-sufficiency;

(4) Lists the supportive services that are generally available under the program and the methods by which a participant may access these services;

(5) Describes the services the department shall provide to enable participants to obtain and maintain employment and increase their potential long-term earnings and opportunities for employment advancement; and

(6) Designates the number of hours that he or she must participate in work activities to meet participation standards, unless the participant is deemed by the department to be exempt or temporarily deferred from work participation requirements.

(e)(1) The department shall review the progress of the participant in the program and meet with the participant as necessary to review and revise his or her employability plan.

(2) The department shall inform the participant of his or her time remaining on the lifetime limit on financial assistance and shall reassess the client's needs for supportive services.

(f) The department may develop and promulgate rules requiring program applicants who have been determined to be job-ready to engage in job search activities while the application is being processed.

(g) The department shall not require an applicant to engage in job search activities if, in the judgment of the department, the applicant has one (1) or more barriers which if not addressed would prevent the applicant from finding employment.

(h)(1) Before requiring the applicant to engage in job search activities, the department shall ask the applicant whether childcare or transportation assistance, or both, will be needed to complete job search activities.

(2) If needed child care and transportation are not available, the applicant shall not be required to engage in job search activities as a condition of application approval.

History. Acts 1999, No. 1567, § 18; 2007, No. 514, § 17; 2019, No. 315, § 2255.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (f).

20-76-443. Education and training.

(a)(1) The Department of Human Services and the Division of Workforce Services shall permit Transitional Employment Assistance Program recipients to obtain the education and training they need to obtain jobs that pay wages allowing them to be economically self-sufficient.

(2) Program recipients who are assessed as having basic education deficiencies shall be allowed to combine educational activities leading to a high school diploma or high school equivalency diploma approved by the Adult Education Section and employment and work experience. Participants may be required to engage in internships, work experience, or employment. Work requirements shall not exceed fifteen (15) hours per week unless the department certifies that allowing education to count toward Transitional Employment Assistance Program recipients' required work activities would affect the state's ability to meet federal work participation rates. To the extent possible, educational activities shall take place in a work context.

(3)(A) Qualified Transitional Employment Assistance Program recipients shall be allowed to enroll in vocational education courses designed to prepare them for jobs in high-growth, high-wage occupations.

(B) As long as the recipient's coursework, including study time, exceeds the minimum number of work activity hours required to count toward federal work participation rates, this activity alone shall satisfy the recipient's required work activity.

(C)(i) If a recipient's coursework, including study time, does not exceed the minimum number of work activity hours required to count toward federal work participation rates, the recipient may be required to engage in internships or work experience related to the course of study.

(ii) However, the combination of work activities and the recipient's coursework shall not exceed the minimum number of work activity hours required to count toward federal work participation rates.

(D)(i) The department may suspend the allowance to enroll only if the Arkansas Workforce Development Board certifies that allowing education to count toward a Transitional Employment Assistance Program recipient's required work activities would affect the state's ability to meet federal work participation rates.

(ii) Upon certification, the department may require all recipients to engage in work activities for the number of hours required to count toward the federal work participation rates.

(4)(A) Qualified Transitional Employment Assistance Program recipients shall be allowed to enroll in postsecondary courses leading to a two-year or four-year degree or a five-year teaching degree.

(B) As long as the recipient's coursework, including study time, exceeds the minimum number of work activity hours required to count toward federal work participation rates, this activity alone shall satisfy the recipient's required work activity.

(C)(i) If a recipient's coursework does not exceed the minimum number of work activity hours required to count toward federal work participation rates, the recipient may be required to engage in internships or work experience related to the course of study.

(ii) However, the combination of work activities and the recipient's coursework shall not exceed the minimum number of work activity hours required to count toward federal work participation rates.

(D)(i) The department may suspend the allowance to enroll only if the board certifies that allowing education to count toward a program recipient's required work activities would affect the state's ability to meet federal work participation rates.

(ii) Upon certification, the department may require all recipients to engage in work activities for the number of hours required to count toward the federal work participation rates.

(5) Participants under each of these options shall be provided the supportive services they need to attend classes and other educational activities, including, at least, child care and transportation.

(b) Transitional Employment Assistance Program recipients shall be assigned to work activities that prepare them for long-term economic self-sufficiency, including basic, vocational, and postsecondary education when appropriate.

(c) Participation in combined work and education activities shall be deemed to meet Transitional Employment Assistance Program recipients' work activity requirements. The department may require additional or fewer hours of federally defined work activities if it certifies that the state may not meet federal work participation rates after taking into account the caseload reduction credit because recipients enrolled in educational courses are not required to engage in federally defined work activities for the minimum number of hours.

(d)(1) For a qualified Transitional Employment Assistance Program recipient enrolled in a two-year college, the education program created in this section shall pay for child care for the recipient's children for both day and evening classes.

(2) The Division of Workforce Services and the Arkansas Early Childhood Commission jointly shall promulgate rules to develop an evening childcare program with extended hours under subdivision (d)(1) of this section.

History. Acts 1999, No. 1567, § 22; 2003, No. 1306, § 6; 2005, No. 1705, § 18; 2007, No. 514, §§ 19, 20; 2009, No. 1485, § 1; 2013, No. 1132, § 46; 2015, No. 1115, § 28; 2019, No. 910, §§ 530, 531.

Amendments. The 2019 amendment

substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(1) and (d)(2); and substituted "Adult Education Section" for "Department of Career Education" in the first sentence of (a)(2).

20-76-444. Arkansas Work Pays Program — Created — Duties.

(a)(1) There is created the Arkansas Work Pays Program.

(2)(A) The Arkansas Work Pays Program shall be administered by the Division of Workforce Services.

(B) The administration of the Arkansas Work Pays Program shall focus on promoting the Transitional Employment Assistant Program outcomes specified in § 20-76-113.

(3) Eligible applicants to the Arkansas Work Pays Program shall receive one (1) or more of the following:

(A) Cash assistance;

(B) Support services;

(C) Medical assistance; and

(D) Employment assistance.

(b)(1) Eligibility for assistance under the Arkansas Work Pays Program is limited to applicants or participants who:

(A) Have care and custody of a related minor child;

(B) Reside in the State of Arkansas at the time of application for assistance and during the period of assistance;

(C) Apply for Arkansas Work Pays Program assistance within six (6) months of leaving the Transitional Employment Assistance Program after at least three (3) months of Transitional Employment Assistance Program assistance;

(D) Have not received more than twenty-four (24) months of Arkansas Work Pays Program benefits;

(E) Were engaged:

(i) In paid work activities for a minimum of twenty-four (24) hours per week and met the federal work participation requirement for the past month; or

(ii) In the case of continuing eligibility, in paid work activities for a minimum of twenty-four (24) hours per week and met the federal work participation requirement for one (1) of the past three (3) months and for at least three (3) of the past six (6) months;

(F) Are:

(i) Citizens of the United States;

(ii) Qualified aliens lawfully present in the United States before August 22, 1996;

(iii) Qualified aliens who physically entered the United States on or after August 22, 1996, and have been in qualified immigrant status for at least five (5) years; or

(iv) Aliens to whom benefits under Temporary Assistance for Needy Families must be provided under federal law;

(G) Have income below one hundred fifty percent (150%) of the federal poverty level; and

(H) Sign and comply with a personal responsibility agreement.

(2) Families who leave the Arkansas Work Pays Program due to insufficient work hours may reenter the Arkansas Work Pays Program once they establish that they were paid work activities for a minimum of twenty-four (24) hours per week and met the federal work participation requirement for the past month.

(c)(1) Families participating in the Arkansas Work Pays Program with earnings less than the federal poverty level shall receive monthly cash assistance equal to the maximum monthly Transitional Employment Assistance Program benefit for a family of three (3) with no earned income.

(2) The division may set payment levels for families earning above the federal poverty level by rule to allow for a gradual reduction in payments as earnings rise toward one hundred fifty percent (150%) of the federal poverty level.

(d)(1) Enrollment in Arkansas Work Pays Program cash assistance may be limited to three thousand (3,000) participants.

(2) If the Arkansas Workforce Development Board certifies to the Governor and the Chief Fiscal Officer of the State and notifies the Legislative Council, the Senate Committee on Public Health, Welfare, and Labor, and the House Committee on Public Health, Welfare, and Labor that the action is necessary to avoid the number of families receiving Arkansas Work Pays Program cash assistance going over three thousand (3,000), it may authorize a reduction of the months for which families may receive cash assistance or other supportive services.

(3) The number of months for which families are eligible for cash assistance may be reduced in three-month increments from the statutory provision of twenty-four (24) months.

(4) Families who lose eligibility for cash assistance due to the reduction in the number of months of eligibility shall qualify for financial incentives offered to families leaving the Arkansas Work Pays Program.

(5) The board shall withdraw its reduction of the months for which families are eligible for cash assistance if the reduction is no longer necessary to maintain enrollments below three thousand (3,000) families.

(e) Families participating in the Arkansas Work Pays Program shall be eligible for the same support services and assistance as families enrolled in the Transitional Employment Assistance Program.

(f) The division shall administer a work incentive program that includes cash bonuses and other financial incentives to encourage:

(1) Transitional Employment Assistance Program recipients to leave the Transitional Employment Assistance Program and move into the Arkansas Work Pays Program;

(2) Arkansas Work Pays Program participants to stay employed for at least twenty-four (24) hours a week and meet the federal work participation rate; and

(3) Arkansas Work Pays Program participants to leave the Arkansas Work Pays Program and continue employment for at least twenty-four (24) hours per week.

(g)(1) The division shall work with local workforce offices to develop and administer services to Arkansas Work Pays Program participants designed to help them move into higher-paying jobs available in their regions.

(2) These services may include:

(A) Employment exchanges;

(B) Education and training;

(C) Work supports; and

(D) Other services designed to help Arkansas Work Pays Program participants increase their earnings and develop careers.

(3) The division may make these services available to low-income workers who are not participating in the Arkansas Work Pays Program.

(h) The division may contract with the Department of Human Services for administrative services related to eligibility and payments.

(i) The division shall make arrangements with the Department of Human Services to facilitate participants' enrollment in the Arkansas Work Pays Program after they leave the Transitional Employment Assistance Program.

(j)(1) The division shall promulgate rules establishing the Arkansas Work Pays Program.

(2) The rules shall be subject to review and recommendation by the board.

History. Acts 2005, No. 1705, § 19; 2007, No. 514, §§ 21, 22; 2009, No. 952, § 15; 2019, No. 910, §§ 532-537.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" and "division" for "department" throughout the section.

20-76-445. Career Pathways Initiative — Findings.

(a) The General Assembly finds that:

(1) Higher education credentials are:

(A) Becoming increasingly important for the State of Arkansas to maintain a competitive workforce; and

(B) Critical for adults to qualify and obtain high-wage employment; and

(2) It is in the public interest that:

(A) Individuals improve their education credentials in order to qualify for higher-wage jobs;

(B) Eligible persons have access to postsecondary education programs that meet the specific needs of working adults;

(C) Institutions of higher education offer programs targeted to the specific workforce needs of their area within the state; and

(D) Our state provide services aimed at improving employment prospects for low-income adults.

(b)(1)(A) The Division of Workforce Services, the Division of Higher Education, and the Arkansas Workforce Development Board shall work jointly to develop a plan for the Career Pathways Initiative.

(B) The plan shall be updated annually.

(2) The initiative shall:

(A) Increase the access of low-income parents and other individuals to education credentials that qualify them for higher-paying jobs in their local areas;

(B) Improve the preparedness of the Arkansas workforce for high-skill and high-wage jobs;

(C) Develop training courses and educational credentials after consulting local employers and local workforce boards to identify appropriate job opportunities and needed skills and training to meet employers' needs;

(D) Provide resources on the basis of performance incentives, including participants:

(i) Enrolling in courses;

(ii) Completing the courses;

(iii) Obtaining jobs in the targeted job categories; and

(iv) Staying employed in the targeted job categories;

(E) Use available Temporary Assistance for Needy Families funds for participants who have custody or legal responsibility for a child under twenty-one (21) years of age and whose family income is less than two hundred fifty percent (250%) of the federal poverty level; and

(F) Incorporate the existing Career Pathways Program.

(c) The initiative plan shall be subject to review, recommendation, and approval by the Arkansas Workforce Development Board.

(d) Under the initiative, the Division of Higher Education shall contract to provide education and training that will result in job training certificates or higher education degrees for Transitional Employment Assistance Program participants and other low-income adults with:

(1) State agencies;

(2) Two-year colleges;

(3) Local governments; or

(4) Private or community organizations.

(e)(1) The initiative plan shall specify procedures and requirements for applications for entry into programs under subsection (d) of this section.

(2) Applications shall be made to the Division of Higher Education.

(f) The Division of Higher Education shall determine which two-year college proposals are funded under the initiative.

(g) Temporary Assistance for Needy Families funds may be combined with other federal, state, and local funds in ways consistent with federal laws and regulations.

History. Acts 2005, No. 1705, § 19; 2007, No. 514, § 23; 2015, No. 907, § 12; 2019, No. 910, §§ 538-541.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (b)(1)(A); and substituted "Division of Higher Education" for "Department of Higher Education" in (d), (e)(2), and (f).

20-76-446. Community Investment Initiative.

(a)(1) There is created the Community Investment Initiative.

(2) The Division of Workforce Services shall develop the initiative.

(b) The division shall contract with private or community organizations, including faith-based organizations, to offer services and support to parents, children, and youth in their communities.

(c) The initiative may fund programs for the following purposes:

(1) Improving outcomes for youth, including, but not limited to:

(A) Academic achievement;

(B) Job skills;

(C) Civic participation and community involvement; and

(D) Reducing risky behaviors such as sexual activities, drug use, and criminal behavior;

(2) Improving parenting and family functioning through services and support to parents, children, and to families;

(3) Improving marriage and relationship skills among youth and engaged and married couples;

(4) Improving the financial and emotional connections of noncustodial parents to their children through fatherhood programs;

(5) Improving the employment skills and family connections of parents who leave state jails and prisons;

(6) Providing supportive services to child-only cases in the Transitional Employment Assistance Program; and

(7) Other purposes allowable under the federal Temporary Assistance for Needy Families program.

(d)(1) The division shall authorize contracts with state agencies or community organizations to provide training and capacity building services to organizations eligible to apply for initiative funds.

(2) Contracts may be let for the following purposes:

(A) Assisting in the development of proposals to be funded through the initiative;

(B) Preparing organizations for the fiscal responsibilities involved in receiving and spending state and federal funds; and

(C) Improving the provision of services by contractors receiving funds from the initiative.

(e) Use of Temporary Assistance for Needy Families Program funds shall be subject to appropriations by the General Assembly for the initiative.

(f) Contracts shall include performance-based payments keyed to participation in services and specified outcomes.

(g) Temporary Assistance for Needy Families Program funds may be combined with other state, federal, and other funds in ways consistent with federal laws and rules.

History. Acts 2005, No. 1705, § 19; 2007, No. 514, § 24; 2019, No. 910, §§ 542-544.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(2); and substituted "division" for "department" in (b) and (d)(1).

Subchapter 7 — Drug Screening and Testing Act of 2015

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-76-702. Definitions.

As used in this subchapter:

(1) "Caretaker relative" means any of the following individuals living with a minor child:

(A) A parent or stepparent;

(B) A grandparent;

(C) A sibling, half-sibling, or stepsibling;

(D) An aunt or uncle of any degree;

(E) A first cousin, nephew, or niece; and

(F) A relative by adoption within the previously named classes;

(2) "Chain of custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all materials or substances, providing accountability at each stage in handling, testing, and storing specimens and reporting test results;

(3) "Confirmation test" means a second analytical procedure used to identify the presence of a specific drug or drug metabolite in a specimen, which test may be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy;

(4)(A) "Drug" means marijuana, cocaine, methamphetamine, amphetamine, and opiates, including without limitation morphine.

(B) The Director of the Division of Workforce Services may add under the definition of subdivision (4)(A) of this section additional drugs by rule;

(5) "Drug test" means any chemical, biological, or physical instrumental analysis administered by a drug testing agency authorized to test under this subchapter for the purpose of determining the presence or absence of a drug or its metabolites;

(6) "Drug testing agency" means an entity that has the required credentials as established by the Division of Workforce Services to administer drug tests using a person's urine, blood, or DNA that will detect and validate the presence of drugs in a person's body;

(7) "Drug treatment program" means a service provider that provides confidential, timely, and expert identification, assessment, and resolution of drug or alcohol abuse problems affecting a person;

(8) "Five-panel drug test" means a test for marijuana, cocaine, methamphetamine, amphetamine, and opiates, including without limitation morphine;

(9) "Protective payee" means a caretaker relative or legal guardian of a minor child unless the caretaker relative who is an applicant for Temporary Assistance for Needy Families Program benefits receives a positive result on a drug test; and

(10) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of drugs or drug metabolites.

History. Acts 2015, No. 1205, § 1; 2015 (1st Ex. Sess.), No. 2, § 2; 2015 (1st Ex. Sess.), No. 3, § 2; 2019, No. 910, §§ 545, 546.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (4)(B) and (6).

20-76-703. Administration.

(a)(1) Subject to state appropriation, the Division of Workforce Services, in coordination with the Department of Human Services, shall establish and administer a drug screening and testing program of suspicion-based drug screening and testing for each applicant who is otherwise eligible for the Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its successor program and for each recipient of the Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its successor program.

(2) The drug screening and testing program shall include the population statewide.

(b)(1) A dependent child under eighteen (18) years of age is exempt from the drug screening and testing requirement unless the dependent child is a parent who is also an applicant for the Temporary Assistance for Needy Families Program and who does not live with a parent, legal guardian, or other adult caretaker relative.

(2) An entity or individual participating in the Career Pathways Initiative or Community Investment Initiative under the Temporary Assistance for Needy Families Program is exempt from the drug screening and testing requirement.

(c)(1) An applicant or recipient may inform the drug testing agency administering the test of any prescription or over-the-counter medication that the individual is taking.

(2) An applicant or recipient shall not be denied Temporary Assistance for Needy Families Program benefits on the basis of failing a drug test if the applicant has a current and valid prescription or a written certification and a registry identification card issued under the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98, for the drug in question.

(d)(1) An applicant or recipient shall undergo a confirmation test using the same specimen sample from the initial positive test before receiving Temporary Assistance for Needy Families Program benefits.

(2) The results of the confirmation test shall be used to determine final eligibility for Temporary Assistance for Needy Families Program benefits.

History. Acts 2015, No. 1205, § 1; 2017, No. 314, §§ 1-3; 2019, No. 910, § 547.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(1).

20-76-704. Powers and duties.

(a) The Division of Workforce Services, in coordination with the Department of Human Services, shall:

(1) Consult with substance abuse treatment experts;

(2) Develop appropriate screening techniques and processes to establish reasonable cause that an applicant or recipient is using a drug and to establish the necessary criteria to permit the division, in coordination with the department, to require the applicant or recipient to undergo no less than a five-panel drug test;

(3) Identify and select a screening tool as a part of the development of the screening technique that will be employed for the drug screening and testing program under this subchapter;

(4) Develop a plan for funding of the costs of the screening process, the no less than five-panel drug testing process, personnel and information systems modification, and other costs associated with the development and implementation of the testing process; and

(5) Develop a plan for any modification of its information systems necessary to properly track and report the status of applicants or recipients who are screened and who must undergo testing as required by this subchapter, including without limitation a detailed analysis of costs for systems analysis, programming, and testing of modifications and for implementation dates for completion of the modifications.

(b) Annually, the division, in coordination with the department, shall submit a report of the past calendar year on or before February 1 to the General Assembly that includes without limitation:

(1) The number of individuals screened;

(2) The number of screened individuals for whom there was a reasonable suspicion of illegal drug use;

(3) The number of screened individuals who took a drug test;

(4) The number of screened individuals who refused to take a drug test;

(5) The number of screened individuals who received a positive result on the drug test;

(6) The number of screened individuals who received a negative result on the drug test;

(7) The number of individuals who received a positive result on a drug test for a second or subsequent time;

(8) The amount of costs incurred by the division for the administration of the drug screening and testing program; and

(9) The number of applications and re-applications received for the Temporary Assistance for Needy Families Program, § 20-76-101 et seq., in the previous year and the current year.

History. Acts 2015, No. 1205, § 1; 2017, No. 314, §§ 4-6; Acts 2019, No. 910, §§ 548-551.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" and "division" for "department" throughout the section.

20-76-705. Standards in drug screening and testing pilot program.

The drug screening and testing program shall include without limitation:

(1)(A) A requirement that an applicant upon initial application for Temporary Assistance for Needy Families Program benefits or a current recipient of program benefits at annual redetermination shall be screened using an empirically validated drug screening tool.

(B) If the result of the drug screening tool gives the Division of Workforce Services a reasonable suspicion to believe that the applicant or recipient has engaged in the use of drugs, then the applicant or recipient shall be required to take a drug test.

(C) A refusal by an applicant or recipient to take a drug test shall result in lack of eligibility for program benefits for six (6) months;

(2) A process for administering the cost of drug tests as follows:

(A) If an applicant or recipient receives a negative result on a drug test, the cost of administering the drug test shall be paid by the division;

(B) If an applicant or recipient receives a positive result on a drug test, refuses to enter a treatment plan, and receives a negative result on a drug test upon reapplying for benefits after six (6) months, the cost of administering the first drug test shall be deducted from his or her first program benefits, and the cost of administering the second drug test shall be paid by the division;

(C) If an applicant receives a positive result on a drug test and enters a treatment plan, the cost of administering the drug test shall be deducted from his or her first program benefits; and

(D) If a recipient receives a positive result on a drug test and enters a treatment plan, the cost of administering the drug test shall be deducted from his or her first program benefits after redetermination;

(3)(A) A referral process for any applicant or recipient who receives a positive result on a drug test to be referred to an appropriate treatment resource for drug abuse treatment or other resource by the division for an appropriate treatment period as determined by the division.

(B) Evidence of ongoing compliance during the determined treatment period shall be required.

(C) If an applicant or recipient is otherwise eligible during the treatment period, the applicant shall receive program benefits;

(4) A requirement that a refusal to enter a treatment plan or failure to complete the treatment plan by an applicant or recipient who receives a positive result on a drug test shall result in lack of eligibility for program benefits for six (6) months;

(5)(A) A requirement that an applicant or recipient be tested using the no less than five-panel drug test upon the conclusion of the determined treatment period.

(B) If an applicant or recipient receives a positive result on the no less than five-panel drug test or any subsequent drug test, the applicant shall be ineligible for program benefits for six (6) months.

(C) If an applicant or recipient who has failed a drug test reapplies for program benefits, the applicant or recipient shall test negative for illegal use of controlled substances in order to receive program benefits, and the division may provide a referral to an appropriate treatment resource for drug abuse treatment or other resource; and

(6)(A) A requirement that a dependent child's eligibility for program benefits shall not be affected by a caretaker relative's ineligibility due to positive results on a drug test.

(B) An appropriate protective payee shall be designated to receive program benefits on behalf of the dependent child.

History. Acts 2015, No. 1205, § 1; 2017, No. 314, §§ 7, 8; 2019, No. 910, §§ 552-555.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (1)(B); substituted "division" for "department" throughout the section; and made a stylistic change.

20-76-706. Information regarding drug testing.

(a) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the Division of Workforce Services as a part of the drug testing program under this subchapter shall be confidential and not subject to disclosure and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings.

(b)(1) Information regarding drug test results for a test administered under this subchapter shall not be released to law enforcement officers or used in any criminal proceeding.

(2) Information released contrary to subdivision (b)(1) of this section is inadmissible as evidence in a criminal proceeding.

(c) This subchapter does not prohibit:

(1) The division or a drug testing agency conducting the drug test from having access to an adult applicant's or adult recipient's drug test information or using the information when consulting with legal counsel in connection with actions brought under or related to this subchapter or when the information is relevant to its defense in a civil or administrative matter; or

(2) The reporting of child abuse, child sexual abuse, or neglect of a child.

History. Acts 2015, No. 1205, § 1; 2019, No. 910, §§ 556, 557.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a); and substituted "division" for "department" in (c)(1).

20-76-708. Rulemaking authority.

(a) The Director of the Division of Workforce Services, in coordination with the Department of Human Services, shall promulgate rules necessary for the implementation of this subchapter.

(b) The director shall consider the following when promulgating rules:

(1) Testing procedures established by the United States Department of Health and Human Services and the United States Department of Transportation;

(2) Screening procedures established by the substance abuse experts to determine when a person exhibits the criteria to determine that there is reasonable cause to suspect that a person is likely to use drugs;

(3) Body specimens and minimum specimen amounts that are appropriate for drug testing;

(4) Methods of analysis and procedures to ensure reliable drug testing results, including without limitation standards for initial tests and confirmation tests;

(5) Minimum detection levels for each drug or drug metabolite for the purpose of determining a positive result;

(6) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested; and

(7) Retention, storage, and transportation procedures to ensure reliable results of drug tests used in the administration of this subchapter.

History. Acts 2015, No. 1205, § 1; 2017, No. 314, § 9; 2019, No. 910, § 558.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a).

Subchapter 8 — Employment Opportunities for Able-Bodied Adults Act of 2019

20-76-801. Title.

This subchapter shall be known and may be cited as the "Employment Opportunities for Able-Bodied Adults Act of 2019".

History. Acts 2019, No. 974, § 1.

20-76-802. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Arkansas has made great strides in promoting work for able-bodied adults across other public assistance programs;

(2) Arkansas can continue those initiatives by further creating opportunities and spurring economic development by improving its workforce;

(3) Arkansas provides Supplemental Nutrition Assistance Program benefits to more than one hundred twenty-three thousand (123,000) able-bodied adults without young children;

(4) The Supplemental Nutrition Assistance Program in Arkansas should be protected and preserved for the truly vulnerable;

(5) Most able-bodied adults receiving Supplemental Nutrition Assistance Program benefits in Arkansas do not work at all;

(6) Arkansas has the opportunity under federal law to refer able-bodied adults to employment and training programs;

(7) Arkansas has more than thirty-two thousand six hundred (32,600) open jobs; and

(8) Arkansas is projected to create more than one hundred sixty-six thousand (166,000) jobs in 2019.

(b) It is the intent of the General Assembly that this subchapter shall increase employment and self-sufficiency among able-bodied adults who are receiving Supplemental Nutrition Assistance Program benefits.

History. Acts 2019, No. 974, § 1.

20-76-803. Employment and training program requirement.

The Department of Human Services shall require an able-bodied adult under sixty (60) years of age who receives Supplemental Nutrition Assistance Program benefits, has dependents who are all at least six (6) years of age and under eighteen (18) years of age or who has no dependents, and is not otherwise subject to the requirements under 7 U.S.C. § 2015(o), as it existed on January 1, 2019, to participate in an employment and training program established under 7 U.S.C. § 2015(d)(4), as it existed on January 1, 2019, including without limitation a program operated by the department that authorizes a work registrant to perform public service activities through work experience to fulfill the work requirement necessary to receive Supplemental Nutrition Assistance Program benefits.

History. Acts 2019, No. 974, § 1.

A.C.R.C. Notes. Acts 2019, No. 974, § 2(a), provided: "The Department of Human Services shall implement the requirements of the employment and training program under § 20-76-803 in Section 1 of this act by October 1, 2021."

20-76-804. Reporting requirement.

(a) The Department of Human Services shall report the department's implementation of the employment and training program requirement under § 20-76-803 one (1) time per calendar quarter to the House Committee on Public Health, Welfare, and Labor.

(b) The department shall develop and submit a report containing statistics of participation in the employment and training program one (1) time per calendar quarter to the House Committee on Public Health, Welfare, and Labor.

History. Acts 2019, No. 974, § 1.

A.C.R.C. Notes. Acts 2019, No. 974, § 2(b), provided: "The first report required under § 20-76-804(b) in Section 1 of this act is required after October 1, 2021."

CHAPTER 77

MEDICAL ASSISTANCE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

SECTION.
20-77-139. Elimination of waiting list.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

Acts 2019, No. 951, § 3: Apr. 12, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that use of the new Peer Support benefit in the Arkansas Medicaid Program is hindered by the inability under current rules to hire individuals who have committed drug-related offenses; that individuals who have served jail time can often have the most success in reaching individuals struggling with substance abuse addiction; that substance abuse is a growing issue for the State of Arkansas; that barriers should be removed to give providers all necessary resources to combat substance abuse; and that this act is immediately necessary to allow the Department of Human Services to make administrative rules at the earliest possible date to ensure the employment of individuals with drug-related offenses in the Peer Support benefit, to help reach individuals struggling with substance abuse addiction, and to combat substance abuse addiction. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

20-77-102. Program for long-term care facility care.

(a) The appropriate division of the Department of Human Services is authorized to establish a program to provide for long-term care facility care for all residents of this state who are found to be qualified for and in need of long-term care facility care, as provided in this section.

(b) The program shall consist of:

(1) Long-term care facililty care for those persons eligible to receive medical care benefits under Title XIX of the Social Security Act in accordance with federal and state regulations promulgated therefor, within the maximum limitations provided under federal law or regulation for federal reimbursement for long-term care facility care under Title XIX of the Social Security Act; and

(2) A program of state financial assistance for long-term care facility care for persons who are not eligible for medical care benefits under Title XIX of the Social Security Act to the extent that the cost of the

class of long-term care facility care for which the person is determined to be qualified exceeds the ability of the person to pay for the care.

(c)(1) However, the deputy director of the appropriate division of the department shall, in establishing the level of payment for services and benefits for long-term care facility care to be provided under the provisions of this section, promulgate appropriate rules to limit the cost of services to the State of Arkansas to funds available or estimated to be available to the appropriate division for that purpose during each fiscal year.

(2) The rules promulgated by the deputy director shall provide that all persons eligible within each class of eligibility shall receive equal consideration for benefits.

(3) The deputy director of the appropriate division of the department is authorized to promulgate such additional rules as deemed to be necessary to prevent abuse of benefits under this section, yet make available to the residents of this state who are eligible the full benefits of this section within the limitation of funds available therefor.

(d) The Secretary of the Department of Human Services, with the approval of the Governor and after obtaining the advice of the Legislative Council, may provide for an expanded comprehensive program of long-term care facility care for residents of this state if he or she deems the program advisable or appropriate in order to take advantage of expanded federal programs or participation therein, within the limitation of funds that may be available to the department therefor.

History. Acts 1965 (2nd Ex. Sess.), No. 14, § 7; 1977, No. 416, § 1; A.S.A. 1947, § 83-162; Acts 2003, No. 136, § 1; 2017, No. 591, § 5; 2019, No. 315, § 2256; 2019, No. 910, § 5218.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (c)(1) and (c)(3); and substituted "rules" for "regulations" in (c)(2).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (d).

20-77-106. Medical services program for Medicaid-eligible patients of Arkansas Children's Hospital.

(a) The Arkansas Children's Hospital, as recognized by § 20-78-102, is authorized to enter into agreements with the appropriate division of the Department of Human Services to establish and maintain a medical services program for Medicaid-eligible patients of the Arkansas Children's Hospital and to transfer funds to the Medical Services Fund Account pursuant to such an agreement.

(b) Such an agreement between the Arkansas Children's Hospital and the appropriate division of the department shall be in compliance with federal law and shall meet the qualifications necessary for federal funds to be paid for the care of eligible patients in the Arkansas Children's Hospital.

(c) The Chief Fiscal Officer of the State shall make rules for the transfer of state funds appropriated for the Arkansas Children's Hospital in order to reimburse the account for expenditures made by the

appropriate division of the department in accordance with agreements made between the Arkansas Children's Hospital and the appropriate division of the department.

History. Acts 1975 (Extended Sess., 1976), No. 1107, § 3; reen. Acts 1987, No. 1022, § 1; 2019, No. 315, § 2257.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c).

20-77-107. Program for indigent medical care — Rules.

(a)(1) The appropriate division of the Department of Human Services is authorized to establish and maintain an indigent medical care program.

(2) However, eligibility rules for the ARKids First Program Act, § 20-77-1101 et seq., shall not include an assets or a resource test for children or families of children eighteen (18) years of age or younger.

(b) The Secretary of the Department of Human Services is further authorized to enter into separate agreements with the University of Arkansas for Medical Sciences and private institutions in order to provide maximum medical care for the indigent persons of this state.

(c) The secretary may enter into agreements with private or public entities to assist in the enforcement of rules of an indigent medical program, including:

(1) Utilization review; and

(2) Professional review of providers participating in the program.

(d)(1) The secretary shall ensure that any entity with whom the Department of Human Services contracts to assist in the enforcement of rules of an indigent medical program will fulfill its duties in accordance with state and federal law, rules, and regulations.

(2) The secretary may terminate any contractor who excessively burdens the State of Arkansas with the defense of appeals of sanctions or citations of deficiencies that are resolved in favor of the program provider.

(e) Nothing in this subchapter shall be construed to permit the Department of Human Services or any entity with whom it contracts to enforce any rules or regulations that are not lawfully promulgated pursuant to federal or state law, provided that the Department of Human Services and any entity with whom it contracts may rely on official publications of the United States Department of Health and Human Services for the administration of the Arkansas Medicaid Program and other rules, regulations, standards, guidance, or information that apply to the Arkansas Medicaid Program by reference in statute, promulgated regulation, rule, or official federal publication.

(f) The secretary shall ensure that the professional review of providers, except long-term care facilities and their reviewers, participating in the program complies with the following:

(1) The party conducting any professional reviews of providers participating in the program shall be knowledgeable in the specific areas of law, rules, and regulations being enforced;

(2)(A) Every citation or deficiency cited to a provider shall refer by source and number to the authority upon which the citation or deficiency is based.

(B) However, the requirement of subdivision (f)(2)(A) of this section does not limit the Department of Human Services and any entity with whom it contracts in the exercise and application of professional medical judgment in determining when and under what circumstances care is medically necessary;

(3) The professional review process shall include an informal dispute resolution process to allow the provider to challenge the citation or deficiency cited or sanction to a person other than the person making the citation as defined by the secretary;

(4) The secretary shall establish a system to ensure standard and consistent application of sanctions and citations or deficiencies among surveyors in different areas of the state; and

(5) The secretary shall establish a process for program providers to appeal a decision of a reviewer pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989, No. 821, § 7; 1995, No. 710, § 6; 2001, No. 724, § 1; 2003, No. 1182, § 1; 2019, No. 315, §§ 2258-2261; 2019, No. 910, §§ 5219, 5220.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(2); deleted "and regulations" following "rules" in the introductory language of (c); in (d)(1), deleted "and regulations" following "enforcement of rules" and inserted the second occurrence of "rules"; and inserted "rules" in (f)(1).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (b); and substituted "secretary" for "director" throughout the section.

20-77-108. Furnishing of annual audit by nonprofit Medicaid providers.

(a) Every nonprofit corporation, except those licensed under § 20-9-201 et seq., which is eligible to receive payments of twenty-five thousand dollars ($25,000) or more for services supplied as a Medicaid provider shall, as a condition of enrollment, provide the Department of Human Services with an annual financial and compliance audit. The audit shall cover the entire operations of the nonprofit organization and be in accordance with the "Guidelines for Financial and Compliance Audits of Programs Funded by the Arkansas Department of Human Services" as promulgated by the department.

(b) Every nonprofit corporation licensed under § 20-9-201 et seq. which is eligible to receive payments of twenty-five thousand dollars ($25,000) or more for services supplied as a Medicaid provider shall, as a condition of enrollment, provide the department with an annual financial audit. The audit shall cover the entire operations of the organization and be in accordance with the Guidelines for Financial and Compliance Audits of Programs Funded by the Arkansas Department of Human Services.

(c) The department is specifically authorized to promulgate rules establishing subrecipient and provider audit requirements for all programs funded through the department.

History. Acts 1989, No. 942, § 1; 1991, No. 1147, § 1; 2019, No. 315, § 2262.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (c).

20-77-110. Increase in reimbursement rate.

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the department, nor shall it adopt any other rule or amendment to the Arkansas Medicaid Program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1993, No. 1239, § 73; 2019, No. 315, § 2263.

Amendments. The 2019 amendment deleted "regulation" following "rule".

20-77-111. Data reports.

(a) The Secretary of the Department of Human Services shall cause to be prepared a compilation of data on the Arkansas Medicaid Program.

(b)(1) The report shall be issued quarterly and shall include comparisons of expenditures and recipients for the quarter with those of the previous quarters and for the same period the previous year.

(2) It shall include other comparisons in the format as may be requested by the Legislative Council, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof to which the reports are to be delivered.

(c)(1) The report shall also identify any changes in eligibility requirements, level of benefits, methods or rates of reimbursement, and any program adjustments implemented to achieve savings in any category of the program.

(2) The report shall also identify any increase or decrease in expenditures as a result of any of these changes in the program.

History. Acts 1993, No. 1239, § 117; 1997, No. 179, § 32; 2003, No. 1473, § 44; 2013, No. 1132, § 47; 2019, No. 910, § 5221.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a).

20-77-121. Adverse decisions — Notice — Rights — Definitions.

(a) As used in this section:

(1) "Adverse action" means the denial, termination, suspension, or reduction of Medicaid eligibility or covered services; and

(2) "Beneficiary" means:

(A) A person who has applied for medical assistance under the Arkansas Medicaid Program; or

(B) A person who is a recipient of medical assistance under the Arkansas Medicaid Program.

(b) If an application or claim for medical assistance is denied, in whole or in part, or is not acted upon with reasonable promptness, the Department of Human Services shall provide written notice:

(1) Of the beneficiary's right and opportunity for a fair hearing under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) Of the method by which the beneficiary may obtain a fair hearing; and

(3) That the beneficiary may:

(A) Represent himself or herself; or

(B) Be represented by:

(i) Legal counsel;

(ii) A friend; or

(iii) Any other spokesperson except a corporation.

(c) A notice required under subsection (b) of this section shall include, but not be limited to:

(1) A statement detailing:

(A) The type and amount of medical assistance that the beneficiary has requested; and

(B) The adverse action that the department has taken or proposes to take; and

(2) A statement of the reasons for the adverse action that shall include, but not be limited to:

(A) The specific facts regarding the individual beneficiary that support the action; and

(B) The sources from which the facts were derived.

(d) If the adverse action that the department has taken or proposes to take is based on a determination of medical necessity or other clinical decision, the notice required under subsection (b) of this section shall:

(1)(A) Include all of the following:

(i) Specification of the medical records upon which the physician or clinician relied in making the determination; and

(ii) Specification of any portion of the criteria for medical necessity or coverage that is not met by the beneficiary.

(B) Generic rationales or explanations shall not suffice to meet the requirements of subdivision (d)(1)(A) of this section;

(2)(A) Include a statement of:

(i) The specific rules or regulations that support the adverse action; or

(ii) The change in federal or state law, if any, since the application was filed, that requires the adverse action.

(B) The information required under subdivision (d)(2)(A) of this section shall include a brief statement of the reasons for the adverse action based on the individual beneficiary's circumstances.

(C) The department and others acting on behalf of the department may not cite or rely on policies that are inconsistent with federal or state laws, rules, and regulations or that were not properly promulgated; and

(3) Include an explanation of:

(A) The beneficiary's right to request a fair hearing, if available; or

(B) In cases of an adverse action based on a change in law:

(i) The circumstances under which a fair hearing will be granted; and

(ii) An explanation of the circumstances under which medical assistance is provided or continued if a fair hearing is requested.

(e)(1) If a beneficiary appeals an adverse action under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the reviewing authority shall consider only those adverse actions that were included in the written notice to the beneficiary as required under subsections (c) and (d) of this section.

(2) All determinations of the medical necessity of any request for medical assistance shall be based on the individual needs of the beneficiary and his or her medical history.

(f) If the department receives an appeal from a beneficiary regarding an adverse action, the department shall provide the beneficiary all records or documents pertaining to the department's decision or the department's contractor's decision to take the adverse action.

(g) If the adverse action is based upon a determination that the requested medical assistance is, or was, not medically necessary, the records and documents required to be provided under this section shall include all relevant material produced by the department or a contractor of the department that contains relevant information concerning the medical necessity determination.

History. Acts 2005, No. 2227, § 1; 2019, No. 315, §§ 2264, 2265; 2019, No. 389, § 75.

Amendments. The 2019 amendment by No. 315 inserted "rules or" in (d)(2)(A)(i); and inserted "rules" in (d)(2)(C).

The 2019 amendment by No. 389 deleted former (a)(3).

20-77-135. Peer support specialist.

The Department of Human Services shall not disqualify or exclude an individual from participation in the Arkansas Medicaid Program based on a criminal background check if:

(1) The individual is employed as a peer support specialist or other similar position;

(2) The individual obtains certification in peer recovery by the Arkansas Substance Abuse Certification Board;

(3) The certification was obtained after the commission of a criminal offense;

(4) The criminal offense does not involve violence or a sexual act; and

(5) The certification process includes due process for appealing a decision based upon a disqualifying charge in the criminal background check.

History. Acts 2019, No. 951, § 2.

20-77-136. Additional albuterol inhaler.

(a) Annually in the month of August, the Arkansas Medicaid Program shall cover the cost of one (1) additional albuterol inhaler for a Medicaid beneficiary who has been prescribed an albuterol inhaler and who is under eighteen (18) years of age.

(b) The Department of Human Services shall apply for any federal waiver, Medicaid state plan amendments, or other authority necessary to implement this section.

(c) This section applies to Medicaid beneficiaries in the fee-for-service Arkansas Medicaid Program and the managed care Arkansas Medicaid Program.

History. Acts 2019, No. 856, § 1.

20-77-137. Ridesharing application — Medicaid reimbursement — Definition.

(a) As used in this section, "ridesharing application" means an online application that connects a passenger with a driver who is licensed under the Transportation Network Company Services Act, § 23-13-701 et seq., for a fee.

(b) The Arkansas Medicaid Program may reimburse for the fee incurred through ridesharing applications to healthcare facilities or offices of healthcare professionals for a Medicaid beneficiary.

(c) Reimbursement shall not be available if the Medicaid beneficiary uses the ridesharing application to travel across state lines.

History. Acts 2019, No. 952, § 1.

20-77-138. Medications approved by United States Food and Drug Administration for tobacco cessation coverage.

(a) The Department of Human Services shall ensure that the Arkansas Medicaid Program covers medications approved by the United States Food and Drug Administration for tobacco cessation, including without limitation:

(1) Nicotine replacement therapy patches;

(2) Nicotine replacement therapy gum;

(3) Nicotine replacement therapy lozenges;

(4) Nicotine replacement therapy nasal spray;

(5) Nicotine replacement therapy inhalers;

(6) Bupropion; and

(7) Varenicline.

(b) Prior authorization shall not be required for coverage of medications described in subsection (a) of this section.

History. Acts 2019, No. 959, § 2.

A.C.R.C. Notes. Acts 2019, No. 959, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) Arkansas has the third-highest rate of adult smokers in the United States;

"(2) Arkansas has the third-highest rate of new lung cancer diagnoses in the United States;

"(3) One-third (1/3) of all cancer-related deaths are tied to the use of tobacco; and

"(4) The Arkansas Healthcare Transparency Initiative, the statewide all-payer claims database, projects that the annual cost of tobacco use to the Arkansas Medicaid Program to be approximately seven hundred ninety-five million dollars ($795,000,000).

"(b) It is the intent of this section to lower the rate of adult smokers in Arkansas and to reduce costs of treatment related to tobacco use-related illness by increasing coverage in the Arkansas Medicaid Program for medications approved by the United States Food and Drug Administration for tobacco cessation."

20-77-139. Elimination of waiting list.

(a) The Department of Human Services shall eliminate the waiting list as existing on March 1, 2019, for the Alternative Community Services Waiver Program, also known as the "Developmental Disabilities Waiver", or successor program.

(b) The department shall meet the requirements of subsection (a) of this section as soon as possible but no later than three (3) years after July 24, 2019 by using available funding streams, unless the department determines that an adequate number of providers for individuals with developmental disabilities does not exist within the state.

(c) An individual who applies for coverage or enrolls in the program after March 1, 2019, may be placed on a waiting list if the department determines that adequate funding streams or resources are not available at the time of application or enrollment.

History. Acts 2019, No. 1033, § 1.

Subchapter 3 — Third-Party Liability

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Effi-

ciencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-77-304. Notice of action or claim — Intervention or consolidation.

(a)(1) If either the medical assistance recipient or the appropriate division brings an action or claim against a third party, the recipient or Department of Human Services shall give to the other party written notice of the action or claim by personal service or registered mail within thirty (30) days of filing the action.

(2) This notice shall contain the names of the third party and the court in which the action is brought.

(3) Proof of the notice shall be filed in the action.

(4) If an action or claim is brought by either the department or the medical assistance recipient, the other may become a party to the action, at any time before trial on the facts, or shall consolidate his or her action or claim with the other if brought independently, at any time before trial on the facts.

(b)(1) If the recipient, his or her guardian, personal representative, estate, or survivors bring an action against the third party who may be liable for injury, disease, or disability, then notice of institution of the legal proceedings and notice of settlement shall be given to the Secretary of the Department of Human Services.

(2) All notices shall be given by the attorney retained to assert the medical assistance recipient's claim or by the medical assistance recipient, his or her guardian, personal representative, estate, or survivors if an attorney is not retained.

History. Acts 1979, No. 419, § 4; A.S.A. 1947, § 83-171.3; Acts 1987, No. 463, § 2; 2011, No. 625, § 3; 2019, No. 910, § 5222.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (b)(1).

20-77-315. Distribution of proceeds from third-party settlement, judgment, or award or from other third-party payment.

CASE NOTES

Amount of Medical Expenses Recovery.

Circuit court did not clearly err in awarding the Arkansas Department of Human Services the full $260,209.99 for the past medical bills paid by Medicaid, although the estate contended that the Medicaid reimbursement should have been reduced proportionately to be consistent with the percentage the settlement represented of the ward's alleged total damages. The Medicaid reimbursement represented 5.85% of the total $4,450,000 lump-sum settlement the estate recovered

in its tort lawsuit and the estate failed to meet its burden of proving the amount of the settlement that did not constitute past medical expenses. Prange v. Ark. Dep't of Human Servs. (In re Estate of Martin), 2019 Ark. App. 180, 574 S.W.3d 693 (2019).

Circuit court did not err when it found that Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006), did not require it to make a ratio-based determination of the lien amount to be reimbursed to the Arkansas Department of Human Services. Prange v. Ark. Dep't of Human Servs. (In re Estate of Martin), 2019 Ark. App. 180, 574 S.W.3d 693 (2019).

Subchapter 4 — Prescription Drugs

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-77-402. Continuation of program.

(a) The Secretary of the Department of Human Services and the deputy director of the appropriate division of the Department of Human Services are authorized to provide for continued coverage of prescription drugs under the Title XIX Medicaid Program for the State of Arkansas.

(b) The secretary and deputy director are authorized to establish necessary program guidelines to control the provision of this service, provided that the guidelines are not in conflict with any federal or state law or regulation.

History. Acts 1983, No. 518, § 2; A.S.A. 1947, § 83-174.1; Acts 2019, No. 910, § 5223.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a); and substituted "secretary" for "director" in (b).

20-77-403. Fees paid to participating pharmacists.

(a) The Secretary of the Department of Human Services and the deputy director shall pay each participating pharmacist for each prescription filled under this program the pharmacist's usual and customary charge to the general public for the drug.

(b) However, until existing federal regulations limiting reimbursement for a drug to the lower of the pharmacist's usual and customary charge, or cost of the drug plus a reasonable dispensing fee, are modified or declared invalid by a court, the secretary and the deputy director shall pay for each prescription, the lower of:

(1) The pharmacist's usual and customary charge to the general public for the drug; or

(2) The pharmacist's cost of the drug plus a dispensing fee. The fee will be adjusted annually on July 1 of each year by the percentage change in the Consumer Price Index, except that on any July 1 immediately following a subsequent cost-of-dispensing survey conducted by the appropriate division of the Department of Human Services, the fee will be adjusted using the formula used by the secretary and the deputy director to determine the July 1, 1980, fee or other such formula as may be developed subsequently by the secretary and the deputy director with the approval of the Legislative Council.

(c) In addition to the amounts paid under subdivisions (b)(1) and (2) of this section, at such time as federal regulations shall permit, the pharmacist will also be paid any additional direct and indirect costs which are generated by participation in the Title XIX Medicaid Program. The new additional costs will be paid by the state.

History. Acts 1983, No. 518, § 3; A.S.A. 1947, § 83-174.2; Acts 2019, No. 910, § 5224.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a); and substituted "secretary" for "director" throughout (b).

20-77-404. Approval from United States Department of Health and Human Services.

(a) The Secretary of the Department of Human Services and the deputy director are directed to seek approval by the United States Department of Health and Human Services of the provisions of this subchapter so as to qualify this program for maximum contributions from the United States Department of Health and Human Services under its regulations until those regulations are declared invalid or modified.

(b) If, and to the extent that, the United States Department of Health and Human Services hereafter makes any valid rule that any provision of this subchapter disqualifies this program for the maximum contribution, the secretary and the deputy director are directed to comply with any ruling to the extent necessary to qualify for the maximum contribution.

History. Acts 1983, No. 518, § 4; A.S.A. 1947, § 83-174.3; Acts 2019, No. 910, § 5225.

Amendments. The 2019 amendment inserted "United States" in the section heading; substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a); and substituted "secretary" for "director" in (b).

Subchapter 7 — Special Needs Trust Revolving Fund

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-77-709. Powers of cotrustees of Special Needs Trust Revolving Fund — Logistical support.

(a)(1)(A) The cotrustees of the Special Needs Trust Revolving Fund shall have the power to award benefits if satisfied by a preponderance of the evidence that the requirements for benefits have been met.

(B) The cotrustees shall have authority to award the benefits either to the claimant or directly to the provider of services.

(2) The cotrustees shall hear and determine all matters relating to claims for benefits, including the power to reopen claims without regard to statutes of limitation.

(3) The cotrustees shall have the power to subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings, and receive relevant information regarding any claim.

(4) The cotrustees shall be provided such office, support staff, and secretarial services as are deemed necessary, and the reasonable costs of administration of the trust shall be borne by the trust.

(b) In addition to any other powers and duties specified elsewhere in this subchapter, the cotrustees may:

(1) Regulate the fund's own procedure except as otherwise provided in this subchapter;

(2) Adopt rules to implement the provisions of this subchapter;

(3) Define any term not defined in this subchapter;

(4) Prescribe forms necessary to carry out the purposes of this subchapter;

(5) Request access to any reports of investigations or other data necessary to assist the cotrustees in making a determination of eligibility for benefits under the provisions of this subchapter;

(6) Take notice of general, technical, and scientific facts within their specialized knowledge; and

(7) Publicize the availability of benefits and information regarding the filing of claims therefor.

History. Acts 1993, No. 1228, § 1; 2019, No. 315, § 2266.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b)(2).

20-77-710. Annual report of cotrustees of Special Needs Trust Revolving Fund.

The cotrustees of the Special Needs Trust Revolving Fund shall prepare and transmit annually a report of their activities to the Secretary of the Department of Human Services. This report shall include the amount of benefits paid and a statistical summary of claims and benefits made and denied.

History. Acts 1993, No. 1228, § 1; 2019, No. 910, § 5226.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services".

Subchapter 9 — Medicaid Fraud False Claims Act

Effective Dates. Acts 2019, No. 897, § 24: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2019 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2019 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2019".

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations

of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-77-902. Liability for certain acts.

A person shall be liable to the State of Arkansas, through the Attorney General, for restitution, damages, and a civil penalty for an act or omission in violation of this subchapter if he or she:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any claim, request for payment, or application for any benefit or payment under the Arkansas Medicaid Program;

(2) Knowingly makes or causes to be made any omission or false statement or representation of a material fact for use in determining rights to a benefit or payment under the Arkansas Medicaid Program;

(3) Having knowledge of the occurrence of any event affecting his or her initial or continued right to any benefit or payment or the initial or continued right to any benefit or payment of any other individual in whose behalf he or she has applied for or is receiving a benefit or payment, knowingly conceals or fails to disclose that event with an intent fraudulently to secure the benefit or payment either in a greater amount or quantity than is due or when no benefit or payment is authorized;

(4) Having made or submitted a claim, request for payment, or application to receive any benefit or payment for the use and benefit of another person and having received it, knowingly converts the benefit or payment or any part of the benefit or payment to a use other than for the use and benefit of the other person;

(5) Knowingly presents or causes to be presented a claim for a physician's service for which payment may be made under the program and knows that the individual who furnished the service was not licensed as a physician;

(6) Knowingly solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the program; or

(B) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the program;

(7)(A) Knowingly offers or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce the person to:

(i) Refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the program; or

(ii) Purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the program.

(B) If the transaction is otherwise legal and properly documented as occurring in the normal course of business, subdivision (7)(A) of this section does not apply to:

(i) A discount or other reduction in price obtained by a provider of services or other entity under the program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under the program;

(ii) Any amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the providing of covered items or services;

(iii) Any salary, wages, or commission paid during the normal course of business by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities that are furnishing services reimbursed under the program, if:

(a) The person has a written contract with each individual or entity that specifies the amount to be paid to the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each individual or entity under the contract; and

(b) In the case of an entity that is a Medicaid provider as defined in § 20-77-901, the person discloses, in the form and manner as the Secretary of the Department of Human Services requires, to the entity and upon request to the secretary the amount received from each vendor with respect to purchases made by or on behalf of the entity; or

(iv) Any other payment practice specified by the secretary promulgated pursuant to applicable federal or state law;

(8) Knowingly makes or causes to be made or induces or seeks to induce any omission or false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or Medicaid provider in order that the institution, facility, or Medicaid provider may qualify to obtain or maintain any licensure or certification when the licensure or certification is required to be enrolled or eligible to deliver any healthcare goods or services to Medicaid recipients by state law, federal law, or the rules of the program;

(9) Knowingly:

(A) Charges for any service provided to a patient under the program money or other consideration at a rate in excess of the rates established by the state; or

(B) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under the program, any gift, money, donation, or other consideration other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient:

(i) As a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities; or

(ii) As a requirement for the patient's continued stay in the hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities when the cost of the services provided therein to the patient is paid for in whole or in part under the program;

(10) Knowingly makes or causes to be made any omission or false statement or representation of a material fact in any application for benefits or for payment in violation of the rules, regulations, and provider agreements issued by the program or its fiscal agents;

(11) Knowingly:

(A) Participates, directly or indirectly, in the Arkansas Medicaid Program after having pleaded guilty or nolo contendere to or been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults as defined in the Arkansas Criminal Code, § 5-1-101 et seq.; or

(B) As a certified health provider enrolled in the program pursuant to Title XIX of the Social Security Act or as the fiscal agent of such a provider who employs, engages as an independent contractor, engages as a consultant, or otherwise permits the participation in the business activities of such a provider, any person who has pleaded guilty or nolo contendere to or has been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults as defined in the Arkansas Criminal Code, § 5-1-101 et seq.;

(12) Knowingly submits any false documentation supporting a claim or prior payment to the Office of Medicaid Inspector General or the Medicaid Fraud Control Unit within the Office of the Attorney General during an audit or in response to a request for information or a subpoena;

(13) Knowingly makes or causes to be made, or induces or seeks to induce, any material false statement to the Office of Medicaid Inspector General or the Medicaid Fraud Control Unit within the Office of the Attorney General during an audit or in response to a request for information or a subpoena;

(14) Knowingly forges the signature of a doctor or nurse on a prescription or referral for healthcare goods or services or submits a forged prescription or referral for healthcare goods or services in support of a claim for payment under the program;

(15) Knowingly places a false entry in a medical chart or medical record that indicates that healthcare goods or services have been provided to a Medicaid recipient knowing that the healthcare goods or services were not provided;

(16) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to the program;

(17) Knowingly makes, uses, or causes to be made or used a false record or statement that is material to a false or fraudulent claim to the program;

(18) Knowingly:

(A) Makes, uses, or causes to be made or used a false record or statement that is material to an obligation to pay or transmit money or property to the program; or

(B) Conceals or improperly avoids or decreases an obligation to pay or transmit money or property to the program;

(19) Conspires to commit a violation of this section; or

(20) Knowingly presents or causes to be presented a claim for a service required to be provided by a person with a particular type of license or credential while knowing that the individual who furnished the service was not licensed or credentialed.

History. Acts 1993, No. 1299, § 2; 2003, No. 1163, § 1; 2017, No. 978, § 9; 2019, No. 910, §§ 5227, 5228; 2019, No. 916, § 11.

Amendments. The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" and "secretary" for "director" in (7)(B)(iii)*(b)*; and substituted "secretary" for "director" in (7)(B)(iv).

The 2019 amendment by No. 916, in the introductory language, inserted "restitution, damages, and" and substituted "penalty for an act or omission in violation of this subchapter" for "penalty of three (3) times the amount of the damages"; in the introductory language of (7)(B), added "If the transaction is otherwise legal and properly documented as occurring in the normal course of business"; in (7)(B)(iii), substituted "Any salary, wages, or commission paid during the normal course of business" for "Any amount"; inserted "other" in (7)(B)(iv); inserted "as" preceding "the fiscal agent" in (11)(B); added (20); and made stylistic changes.

20-77-903. Restitution, damages, and civil penalties.

(a)(1) It shall be unlawful for any person to commit any act prohibited by § 20-77-902, and any person found to have committed any such act or acts shall be liable to the State of Arkansas through the Attorney General.

(2) In a case in which direct monetary loss does not exist or in which it is difficult or impossible to determine the extent of the loss, the Attorney General may elect to seek a civil penalty based on the number of fraudulent claims submitted.

(3) The state shall make an election and give notice in the complaint whether the state is seeking a civil penalty of:

(A) Not less than five hundred dollars ($500) but not more than ten thousand dollars ($10,000) for each claim; or

(B) Two (2) times the amount of damages that the state sustained because of the act of the person.

(b) When a person or Medicaid provider discovers an employee or subcontractor working for the person or Medicaid provider has committed a violation of this subchapter or a violation under the Medicaid Fraud Act, § 5-55-101 et seq., any statutory liability for civil penalties under this section may be reduced by fifty percent (50%) if a person or Medicaid provider can establish all of the following:

(1) The person or Medicaid provider committing the violation of this subchapter furnished officials of the Attorney General's office with all information known to the person or Medicaid provider about the violation within thirty (30) days after the date on which the person or Medicaid provider first obtained the information; and

(2) The person or Medicaid provider fully cooperated with any Attorney General's investigation of the violation, and at the time the person or Medicaid provider furnished the Attorney General with the information about the violation:

(A) No criminal prosecution, civil action, or administrative action had commenced under this subchapter with respect to the violation; and

(B) The person or Medicaid provider did not have actual knowledge of the existence of an investigation into the violation.

(c)(1) In addition to any other penalties authorized herein, any person violating this subchapter shall also be liable to the State of Arkansas for the Attorney General's reasonable expenses, including the cost of investigation, attorney's fees, court costs, witness fees, and deposition fees.

(2) Any cost or reimbursement ordered under this subsection shall be paid to the office of the Attorney General to be used for future Medicaid investigations and cases.

(d)(1) When the loss is to the Arkansas Medicaid Program or its fiscal agents, the entirety of any penalty obtained under subsection (a) of this section less reimbursement of investigation and prosecution costs and any reward that may be determined by the court pursuant to this subchapter shall be credited as special revenues of the State of Arkansas and deposited into the Arkansas Medicaid Program Trust Fund for the sole use of the program.

(2) When the loss is to a managed care organization or similar organization that is paid at a capitated rate, the Department of Human Services may return all or a portion of the funds to a managed care organization or any similar organization when permitted by the contract or rules.

(e)(1) A person who engages or has engaged in any act described by § 20-77-902 may be enjoined in a court of competent jurisdiction in an action brought by the Attorney General.

(2) An injunction described by subdivision (e)(1) of this section shall be:

(A) Brought in the name of the state; and

(B) Granted if a case is clearly shown that the rights of the state are being violated by the person and the state will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action or that the acts or omissions of the person will tend to render a final judgment ineffectual.

(f) The court may make orders or judgments, including the appointment of a receiver, as necessary to:

(1) Prevent any act described by § 20-77-902 by any person; or

(2) Restore to the program any money or property, real or personal, that may have been acquired by means of an act described by § 20-77-902.

History. Acts 1993, No. 1299, §§ 3, 4; 1995, No. 1210, § 1; 2017, No. 978, § 9; 2019, No. 916, § 11.

Amendments. The 2019 amendment substituted "Restitution, damages, and civil penalties" for "Civil penalties" in the section heading; rewrote (a) and the introductory language of (b); inserted "or Medicaid provider" throughout (b)(1) and (b)(2); substituted "the person or Medicaid provider first obtained" for "the defendant first obtained" in (b)(1); added the (d)(1) designation; added "When the loss is to the Arkansas Medicaid Program or its fiscal agents" in (d)(1); added (d)(2); and made stylistic changes.

20-77-909. Injunctions against fraud.

(a)(1) Whenever it appears that any person is engaged in or intends to engage in the transfer, conversion, or destruction of assets, records, or property in an effort to avoid detection of violations of this subchapter or avoid paying restitution, fines, and civil penalties owed under this subchapter or the Medicaid Fraud Act, § 5-55-101 et seq., the Attorney General may apply to the Pulaski County Circuit Court, or to the court in which the records or property are located, to seize and impound the property.

(2) The application for an ex parte order shall be in writing, furnish a reasonable basis for the granting of the proposed order, and demonstrate that an emergency exists that would support the granting of the motion.

(b)(1) If the order is granted, the respondent shall be notified of the order seizing and impounding his or her property immediately after the seizure, or as soon as is reasonably practicable. If, after diligent inquiry, the respondent cannot be located, notice under this subsection may be accomplished by leaving a copy of the order at his or her dwelling house or usual place of abode with some person residing therein who is at least eighteen (18) years of age, or by delivering a copy of the order to a representative at the respondent's place of business who is at least eighteen (18) years of age.

(2) If the order is granted, the respondent shall be granted a hearing no later than five (5) days after being notified of the property's seizure for the purpose of determining whether the order should be continued.

(3)(A) If the court finds the assets or funds can be preserved without physical seizure, the court may order a constructive seizure by

entering an order directing the defendant or third-party financial institution to freeze or forgo further transfer of the assets or funds.

(B) The court may fashion the constructive seizure in any manner reasonably necessary to protect and preserve the assets or funds pending the resolution of related civil and criminal cases.

(c) The burden at all stages of the proceeding shall be upon the state to prove by a preponderance of the evidence the necessity of the order of seizure.

History. Acts 1993, No. 1299, § 10; 1995, No. 984, § 1; 2019, No. 916, § 12.

Amendments. The 2019 amendment inserted "or avoid paying restitution, fines, and civil penalties owed under this subchapter or the Medicaid Fraud Act, § 5-55-101 et seq." in (a)(1); added (b)(3); and made stylistic changes.

20-77-910. Suspension of violators.

The Secretary of the Department of Human Services may suspend or revoke the provider agreement between the Department of Human Services and the person in the event that the person is found guilty of violating the terms of this subchapter.

History. Acts 1993, No. 1299, § 9; 2019, No. 910, § 5229.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services".

20-77-911. Persons providing information regarding false Medicaid claims — Rewards.

(a) The court is authorized to pay a person sums, not exceeding ten percent (10%) of the aggregate collected civil penalty recovered, as it may deem just, for information the person may have provided that led to the detecting of false claims under this subchapter.

(b) Upon disposition of any civil action relating to violations of this subchapter in which a civil penalty is recovered, the Attorney General may petition the court on behalf of a person who may have provided information that led to the detecting of false claims and the recovery of restitution and a civil penalty damages assessment to reward the person in an amount commensurate with the quality of information determined by the court to have been provided, in accordance with the requirements of this subchapter.

(c)(1) If the Attorney General elects not to petition the court on behalf of the person, the person may petition the court on his or her own behalf.

(2) Neither the state nor any defendant within the action shall be liable for expenses that a person incurs in bringing an action under this section.

(d) An employee or a fiscal agent charged with the duty of referring or investigating cases of Medicaid fraud who is employed by or who contracts with any governmental entity shall not be eligible to receive a reward under this section.

(e) The Attorney General may agree to a payment of up to ten percent (10%) of the civil penalty as a reward in any settlement agreement under this section.

(f) A portion of restitution shall not be used as a reward.

History. Acts 1993, No. 1299, § 11; 2011, No. 1154, § 1; 2013, No. 1132, § 50; 2019, No. 916, § 13.

Amendments. The 2019 amendment, substituted "false Medicaid claims" for "Medicaid fraud" in the section heading; in (a), inserted "collected civil" and substituted "of false claims under this subchapter" for "and bringing to trial and punishment persons guilty of violating the Medicaid fraud laws"; in (b), inserted "civil" preceding "penalty" and substituted "detecting of false claims and the recovery of restitution and a civil penalty damages assessment" for "detecting and bringing to trial and punishment persons guilty of Medicaid fraud"; added (e) and (f); and made stylistic changes.

20-77-912. Funds for investigations and prosecutions.

(a) Under this subchapter and the Medicaid Fraud Act, § 5-55-101 et seq., the Attorney General or a prosecuting attorney is entitled to recover reasonable and necessary expenses incurred during his or her investigations and prosecutions.

(b) The Attorney General shall create and maintain accounts for these funds.

(c) The federal share of these funds shall be returned to the United States Government in accordance with the federal regulations governing the Medicaid Fraud Control Unit.

(d) The remaining funds shall be retained and expended by the Attorney General to defer the cost of future investigations and prosecutions conducted by the Medicaid Fraud Control Unit.

History. Acts 2019, No. 897, § 21.

Subchapter 13 — Medical Assistance Programs Integrity Law

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-77-1302. Legislative intent and purpose.

(a) This subchapter is enacted to combat and prevent fraud and abuse committed by some healthcare providers participating in the medical assistance programs and by other persons and to negate the adverse effects those activities have on fiscal and programmatic integrity. The administrative sanctions imposed pursuant to this subchapter are intended to be in addition to those provided for in the Medicaid Fraud Act, § 5-55-101 et seq., and the Medicaid Fraud False Claims Act, § 20-77-901 et seq., and any proceeding brought hereunder shall not be a bar or defense to actions brought pursuant to these or other acts.

(b) The General Assembly intends to provide the Secretary of the Department of Human Services with the ability, authority, and resources to pursue administrative sanctions and liquidated damages to protect the fiscal and programmatic integrity of the medical assistance programs from healthcare providers and other persons who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in this subchapter in order to obtain payments to which these healthcare providers or persons are not entitled.

History. Acts 1999, No. 1544, § 2; 2019, No. 910, § 5230.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (b).

20-77-1303. Definitions.

As used in this subchapter, the following terms shall have the following meanings:

(1) "Administrative adjudication" means adjudication and the adjudication process contained in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) "Claim" includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against medical assistance programs funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. A claim may be made through electronic means if authorized by the Department of Human Services. Each claim may be treated as a separate claim or several claims may be combined to form one (1) claim;

(3) [Repealed.]

(4) "Healthcare provider" means any person furnishing or claiming to furnish a good, service, or supply under the medical assistance programs, any other person defined as a healthcare provider by federal or state law or rule, and a provider-in-fact;

(5) "Medical assistance programs" means the Medical Assistance Program, Title XIX of the Social Security Act, commonly referred to as "Medicaid", and other programs operated by and funded in the depart-

ment which provide payment to persons or entities providing any good, service, or supply to a recipient;

(6) "Order" means a final order imposed pursuant to an administrative adjudication;

(7) "Payment" means the payment to a healthcare provider from medical assistance programs funds pursuant to a claim, or the attempt to seek payment for a claim;

(8) "Recoupment" means recovery through the reduction, in whole or in part, of payment to a healthcare provider;

(9) "Rule" means any rule promulgated by the department in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and any federal rule or regulation promulgated by the United States Government in accordance with federal law; and

(10) "Withhold payment" means to reduce or adjust the amount, in whole or in part, to be paid to a healthcare provider for a pending or future claim during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the healthcare provider.

History. Acts 1999, No. 1544, § 3; 2019, No. 315, § 2267; 2019, No. 389, § 76; 2019, No. 910, § 5231.

Amendments. The 2019 amendment by No. 315 deleted "or regulation" following "means any rule" in (9).

The 2019 amendments by No. 389 repealed (3).

The 2019 amendments by No. 910 repealed (3).

20-77-1304. Claims review and administrative sanctions.

(a)(1) Pursuant to rules promulgated in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Secretary of the Department of Human Services shall establish a process to review a claim made by a healthcare provider to determine whether the claim should be or should have been paid as required by federal or state law or rule.

(2) Claims review may occur before or after payment is made to a healthcare provider.

(3) The secretary may withhold payment to a healthcare provider during claims review if necessary to protect the fiscal integrity of the medical assistance programs, provided that the healthcare provider has an opportunity for a hearing within sixty (60) days of the date payment is withheld.

(b)(1) The secretary may establish various types of administrative sanctions pursuant to rules promulgated in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which may be imposed on a healthcare provider or other person who violates any provision of this subchapter or any other applicable federal or state law or rule related to the medical assistance programs.

(2) Administrative sanction shall include any or all of the following: recoupment, posting of bond or other security, or a combination thereof; exclusion as a healthcare provider; or liquidated damages.

(c)(1) The Department of Human Services shall conduct a hearing in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., at the request of a person who wishes to contest an administrative sanction imposed on him or her by the secretary.

(2) A party aggrieved by an order may seek judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) Judicial review of the order shall be conducted in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) All state rules and regulations issued on or before July 30, 1999, shall be deemed to have been issued in compliance with the authority of this section.

History. Acts 1999, No. 1544, § 4; 2019, No. 315, §§ 2268, 2269; 2019, No. 910, §§ 5232-5235.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (a)(1) and (b)(1).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a)(1); and substituted "secretary" for "director" throughout the section.

20-77-1305. Settlement.

The Secretary of the Department of Human Services may agree to settle an administrative sanction. The terms of the settlement shall be reduced to writing and signed by the parties to the agreement. The terms of the settlement shall be a public record. The settlement shall include the method and means of payment for recovery, including, but not limited to, adequate security for the full amount of the settlement.

History. Acts 1999, No. 1544, § 5; 2019, No. 910, § 5236.

Amendments. The 2019 amendment substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in the first sentence.

Subchapter 14 — Prescription Drug Access Improvement Act

SECTION.

20-77-1403. Definitions.

As used in this subchapter:

(1) [Repealed.]

(2) "Medicaid" means the Arkansas program of medical assistance established under Title XIX of the Social Security Act;

(3) "Prescription Drug Access Program" means the limited prescription drug benefit Medicaid waiver program established under this subchapter;

(4) "Prescription drugs" means controlled substances and legend drugs as defined in § 20-64-503; and

(5) "Waiver" means the limited prescription drug benefit Medicaid waiver authorized by this subchapter.

History. Acts 2001, No. 1658, § 1; 2019, No. 389, § 77.

Amendments. The 2019 amendment repealed (1).

Subchapter 16 — Arkansas Youth Suicide Prevention Act

SECTION.
20-77-1601 — 20-77-1608. [Repealed.]

20-77-1601 — 20-77-1608. [Repealed.]

A.C.R.C. Notes. The repeal of § 20-77-1604 by Acts 2019, No. 1091, § 9, superseded the amendment of § 20-77-1604 by Acts 2019, No. 910, § 2301. Acts 2019, No. 910, § 2301, effective July 1, 2019, replaced "Department of Education" with "Division of Elementary and Secondary Education" in subdivision (c)(1)(A).

The repeal of § 20-77-1606 by Acts 2019, No. 1091, § 9, superseded the amendment of § 20-77-1606 by Acts 2019, No. 910, §§ 2302, 2303. Acts 2019, No. 910, §§ 2302, 2303, effective July 1, 2019, replaced "Commissioner of Education" with "Commissioner of Elementary and Secondary Education" in subdivision (a)(2) and "Department of Education" with "Division of Elementary and Secondary Education" in subdivision (e)(1).

The repeal of § 20-77-1607 by Acts 2019, No. 1091, § 9, superseded the amendment of § 20-77-1607 by Acts 2019, No. 910, § 5102. Acts 2019, No. 910, § 5102, effective July 1, 2019, replaced "Commissioner of Education" with "Secretary of the Department of Education" in subdivision (b)(4).

Publisher's Notes. This subchapter, concerning the Arkansas Youth Suicide Prevention Act, was repealed by Acts 2019, No. 1091, § 9, effective July 24, 2019. The subchapter was derived from the following sources:

20-77-1601. Acts 2005, No. 1757, § 1.

20-77-1602. Acts 2005, No. 1757, § 1.

20-77-1603. Acts 2005, No. 1757, § 1.

20-77-1604. Acts 2005, No. 1757, § 1; 2015, No. 1100, § 53; 2019, No. 910, § 2301.

20-77-1605. Acts 2005, No. 1757, § 1.

20-77-1606. Acts 2005, No. 1757, § 1; 2019, No. 910, §§ 2302, 2303.

20-77-1607. Acts 2005, No. 1757, § 1; 2017, No. 913, § 114; 2019, No. 910, § 5102.

20-77-1608. Acts 2005, No. 1757, § 1; 2013, No. 1132, § 51.

Subchapter 20 — ARKids First Medical Assistance Programs Enrollment and Retention Improvement Program

SECTION.
20-77-2002. Administration.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-77-2002. Administration.

(a) In administering the ARKids First A and B programs, the Department of Human Services shall:

(1) Work to increase enrollment among eligible uninsured children under nineteen (19) years of age;

(2) Work to improve retention of coverage among eligible uninsured children under nineteen (19) years of age;

(3) Design the application and annual renewal processes to minimize administrative barriers for applicants and enrolled children under nineteen (19) years of age to minimize gaps in coverage for children who are eligible and to reduce state administrative costs;

(4) Modify eligibility renewal procedures to improve retention and increase the number of children who retain coverage; and

(5)(A) Manage outreach, application, and renewal procedures with the goal of achieving annual improvements in enrollment, enrollment rates, renewals, and renewal rates.

(B) To make the improvements required under subdivision (a)(1) of this section, the department shall maximize the use of existing program databases to obtain information related to earned and unearned income for purposes of eligibility determination and renewals, including without limitation:

(i) The Supplemental Nutrition Assistance Program (SNAP);

(ii) The state child care subsidy program;

(iii) The Arkansas Better Chance Program;

(iv) The National School Lunch Program;

(v) Federal Social Security Administration programs; and

(vi) The Division of Workforce Services database.

(b) To simplify and streamline the renewal process, the department shall:

(1) Maximize the use of data matches, online submissions, and telephone interviews; and

(2) Develop a pre-populated renewal form that will be sent to families to complete and return for use in cases in which the department is unable to renew coverage through the use of data matching, online submissions, or telephone interviews.

History. Acts 2011, No. 771, § 1; 2019, No. 910, § 559.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(5)(B)(vi).

Subchapter 22 — Healthcare Quality and Payment Policy Advisory Committee

SECTION.

20-77-2205. Medicaid payment and reimbursement rules related to development of episodes of care.

(a)(1) The Department of Human Services shall not adopt a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., related to the development of episodes of care for patient-centered physician services, hospital services, and long-term care services and supports, including without limitation the episodes-of-care target prices and quality metrics, without first submitting the proposed rule to the Healthcare Quality and Payment Policy Advisory Committee for review.

(2) Concurrent with a submission of a draft rule to the committee under subdivision (a)(1) of this section, the department shall issue a public notice of the draft rule for which the department shall:

(A) Include in the notice a statement of the terms or substance of the draft rule and the specific provider category or categories affected;

(B) Mail the notice to any person who requests notice of a submission of a draft rule to the committee under subdivision (a)(1) of this section; and

(C) Post the notice on the department's website in a section dedicated to the committee.

(3) Concurrent with a submission of a draft rule to the committee under subdivision (a)(1) of this section, the department shall post the draft rule on its website in a section dedicated to the committee during the entire period the draft rule is under consideration by the committee.

(4) The department shall provide to a person who requests the information a meeting notice that identifies the time and place of each committee and subcommittee meeting and the draft rules under consideration by the committee or subcommittee at each meeting.

(b)(1) At least forty-five (45) days before initiating the promulgation process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for a rule related to the development of episodes of care for patient-centered physician services, hospital services, or long-term care services and supports, including without limitation the episodes-of-care target prices and quality metrics, the department shall submit the draft rule to the committee for review and advice.

(2)(A) If the draft rule pertains to a healthcare provider listed in § 20-77-2202(2) whose provider category is not represented on the committee, the committee shall seek representation by designated representatives of the statewide provider association or associations for that provider category for the purpose of review and advice.

(B) The committee shall:

(i) Provide at least twenty-five (25) days for the representatives of the affected healthcare providers to review and comment on the draft rule; and

(ii) Afford the representatives the opportunity to participate in committee and subcommittee deliberations on the draft rule.

(C)(i) The committee shall not provide advice to the department without seeking the input of the affected healthcare providers.

(ii) If the committee does not reach agreement with a provider association on a draft rule pertaining to a healthcare provider not represented on the committee, the committee shall prepare a written report that objectively states the information and viewpoints presented but does not advise the department concerning how to proceed on the draft rule.

(c) A rule required to be submitted to the committee under subsection (b) of this section that is adopted without following this section is void.

(d)(1) The committee shall issue and deliver a written advisory statement to the department within thirty (30) calendar days after the department's submission of the proposed rule to the committee.

(2) If the department fails to follow the advice of the committee with respect to a proposed rule under this section, the department, before beginning the promulgation process, shall prepare a written report setting out the advice of the committee and an explanation of the reason that the department decided not to follow the committee's advice with regard to the rule.

(3) The department shall make available for public review the report required under subdivision (d)(2) of this section and the text of the proposed rule during the public comment period.

(4) The department may begin the promulgation process for the proposed rule if the committee does not issue and deliver a written advisory statement to the department within thirty (30) calendar days after the department's submission of the proposed rule to the committee.

(e) After the public comment period, the department shall retain and make available for public review the report required under subdivision (d)(2) of this section and the text of any final rule issued.

History. Acts 2013, No. 1266, § 1; 2019, No. 315, § 2270.

Amendments. The 2019 amendment substituted "rule" for "regulation" in (e).

Subchapter 24 — Health Care Independence Act of 2013

SECTION.

20-77-2401 — 20-77-2408. [Repealed.]

Publisher's Notes. This subchapter, concerning the Health Care Independence Act of 2013, was repealed by Acts 2019, No. 389, § 78, effective July 24, 2019. The subchapter expired December 31, 2016, pursuant to identical Acts 2016 (2nd Ex. Sess.), Nos. 1 and 2, § 2. The subchapter was derived from the following sources:

20-77-2401. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2402. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2403. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2404. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2405. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.
20-77-2406. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.
20-77-2407. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.
20-77-2408. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1; 2016 (2nd Ex. Sess.), No. 1, § 2; 2016 (2nd Ex. Sess.), No. 2, § 2.

Subchapter 25 — Office of Medicaid Inspector General

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-77-2503. Office of Medicaid Inspector General — Created.

The Office of Medicaid Inspector General is created within the Department of Inspector General and is independent from the Department of Human Services.

History. Acts 2013, No. 1499, § 2; 2019, No. 910, § 5260.

Amendments. The 2019 amendment substituted "Department of Inspector General" for "office of the Governor".

20-77-2504. Medicaid Inspector General — Appointment — Qualifications.

(a)(1) The Medicaid Inspector General shall be appointed by the Governor, with the advice and consent of the Senate.

(2) The inspector general shall serve at the pleasure of the Governor.

(b) The inspector general shall report to the Secretary of the Department of Inspector General.

(c) The inspector general shall be the Director of the Office of Medicaid Inspector General.

(d) The inspector general shall have not less than ten (10) years of professional experience in one (1) or more of the following areas of expertise:

(1) Prosecution for fraud;

(2) Fraud investigation;

(3) Auditing; or

(4) Comparable alternate experience in health care, if the healthcare experience involves some consideration of fraud.

History. Acts 2013, No. 1499, § 2; 2019, No. 910, § 5261.

Amendments. The 2019 amendment substituted "to the Secretary of the Department of Inspector General" for "directly to the Governor" in (b).

20-77-2506. Medicaid Inspector General — Duties.

The Medicaid Inspector General shall, in consultation with the Secretary of the Department of Inspector General:

(1) Hire deputies, directors, assistants, and other officers and employees needed for the performance of his or her duties and prescribe the duties of deputies, directors, assistants, and other officers and fix the compensation of deputies, directors, assistants, and other officers within the amounts appropriated;

(2)(A) Conduct and supervise activities to prevent, detect, and investigate medical assistance program fraud and abuse.

(B)(i) The Office of Medicaid Inspector General shall review provider records only for the three (3) years before an investigation begins.

(ii) However, if a credible allegation of fraud has been made or if the Office of Medicaid Inspector General has reason to believe that fraud has occurred, the Office of Medicaid Inspector General may review provider records for the five (5) years before the investigation began;

(3) Work in a coordinated and cooperative manner with:

(A) Federal, state, and local law enforcement agencies;

(B) The Medicaid Fraud Control Unit of the Office of the Attorney General;

(C) United States Attorneys;

(D) The United States Department of Health and Human Services' Office of Inspector General;

(E) The Federal Bureau of Investigation;

(F) The United States Drug Enforcement Administration;

(G) Prosecuting attorneys;

(H) The Centers for Medicare & Medicaid Services; and

(I) An investigative unit maintained by a health insurer;

(4) Solicit, receive, and investigate complaints related to fraud and abuse within the medical assistance program;

(5)(A) Inform the Governor, the secretary, the Attorney General, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives regarding efforts to prevent, detect, investigate,

and prosecute fraud and abuse within the medical assistance program.

(B) All cases in which fraud is determined to have occurred shall be referred to the appropriate law enforcement agency for prosecution;

(6)(A) Pursue civil and administrative enforcement actions against an individual or entity that engages in fraud, abuse, or illegal or improper acts within the medical assistance program, including without limitation:

(i) Referral of information and evidence to regulatory agencies and licensure boards;

(ii) Withholding payment of medical assistance funds in accordance with state laws and rules and federal laws and regulations;

(iii) Imposition of administrative sanctions and penalties in accordance with state laws and rules and federal laws and regulations;

(iv) Exclusion of providers, vendors, and contractors from participation in the medical assistance program;

(v) Initiating and maintaining actions for civil recovery and, where authorized by law, seizure of property or other assets connected with improper payments;

(vi) Entering into civil settlements; and

(vii) Recovery of improperly expended medical assistance program funds from those who engage in fraud or abuse or illegal or improper acts perpetrated within the medical assistance program.

(B) In investigating civil and administrative enforcement actions under subdivision (a)(6)(A) of this section, the Medicaid Inspector General shall consider the quality and availability of medical care and services and the best interest of both the medical assistance program and recipients;

(7) Make available to appropriate law enforcement officials information and evidence relating to suspected criminal acts that have been obtained in the course of the Medicaid Inspector General's duties;

(8)(A) Refer suspected fraud or criminal activity to the Medicaid Fraud Control Unit.

(B) After a referral and with ten (10) days' written notice to the Medicaid Fraud Control Unit, the Medicaid Inspector General may provide relevant information about suspected fraud or criminal activity to another federal or state law enforcement agency that the Medicaid Inspector General deems appropriate under the circumstances;

(9) Subpoena and enforce the attendance of witnesses, administer oaths or affirmations, examine witnesses under oath, and take testimony in connection with an investigation or audit under this subchapter and under rules governing these investigations;

(10) Require and compel the production of books, papers, records, and documents as he or she deems relevant or material to an investigation, examination, or review undertaken under this section;

(11)(A) Examine and copy or remove documents or records related to the medical assistance program or necessary for the Medicaid Inspec-

tor General to perform his or her duties if the documents are prepared, maintained, or held by or available to a state agency or local governmental entity the patients or clients of which are served by the medical assistance program, or the entity is otherwise responsible for the control of fraud and abuse within the medical assistance program.

(B) A document or record examined and copied or removed by the Medicaid Inspector General under subdivision (11)(A) of this section is confidential.

(C) The removal of a record under subdivision (11)(A) of this section is limited to circumstances in which a copy of the record is insufficient for an appropriate legal or investigative purpose.

(D) For a removal under subdivision (11)(A) of this section, the Medicaid Inspector General shall copy the record and ensure the expedited return of the original, or of a copy if the original is required for an appropriate legal or investigative purpose, so that the information is expedited and the original or copy is readily accessible for the care and treatment needs of the patient;

(12)(A) Recommend and implement policies relating to the prevention and detection of fraud and abuse.

(B) The Medicaid Inspector General shall obtain the consent of the Attorney General before the implementation of a policy under subdivision (12)(A) of this section that may affect the operations of the office of the Attorney General;

(13)(A) Monitor the implementation of a recommendation made by the Office of Medicaid Inspector General to an agency or other entity with responsibility for administration of the medical assistance program and produce a report detailing the results of its monitoring activity as necessary.

(B) The report shall be submitted to the:

(i) Secretary;

(ii) President Pro Tempore of the Senate;

(iii) Speaker of the House of Representatives;

(iv) Legislative Council;

(v) Arkansas Legislative Audit; and

(vi) Attorney General;

(14) Prepare cases, provide testimony, and support administrative hearings and other legal proceedings;

(15) Review and audit contracts, cost reports, claims, bills, and other expenditures of medical assistance program funds to determine compliance with applicable state laws and rules and federal laws and regulations and take actions authorized by state laws and rules and federal laws and regulations;

(16)(A) Work with the fiscal agent employed to operate the Medicaid Management Information System of the Department of Human Services to optimize the system, including without limitation the ability to add edits and audits in consultation with the Department of Human Services.

(B) The Medicaid Inspector General shall be consulted before an edit or audit is added or discontinued by the Department of Human Services;

(17) Work in a coordinated and cooperative manner with relevant agencies in the implementation of information technology relating to the prevention and identification of fraud and abuse in the medical assistance program;

(18)(A) Conduct educational programs for medical assistance program providers, vendors, contractors, and recipients designed to limit fraud and abuse within the medical assistance program.

(B) The Office of Medicaid Inspector General shall regularly communicate with and educate providers about the Office of Medicaid Inspector General's fraud and abuse prevention program and its audit policies and procedures.

(C) The Office of Medicaid Inspector General shall educate providers annually concerning its areas of focus within the medical assistance program, appropriate billing and documentation, and methods for improving compliance with program rules, policies, and procedures;

(19)(A) Develop protocols to facilitate the efficient self-disclosure consistent with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the collection of overpayments and monitor collections, including those that are self-disclosed by providers.

(B) A provider's good faith self-disclosure of overpayments may be considered as a mitigating factor in the determination of an administrative enforcement action;

(20) Receive and investigate complaints of alleged failures of state and local officials to prevent, detect, and prosecute fraud and abuse in the medical assistance program;

(21) Implement rules relating to the prevention, detection, investigation, and referral of fraud and abuse within the medical assistance program and to the recovery of improperly expended medical assistance program funds;

(22) Conduct, in the context of the investigation of fraud and abuse, on-site inspections of a facility or an office;

(23)(A) Take appropriate authorized actions to ensure that the medical assistance program is the payor of last resort; and

(B) Recommend to the Department of Human Services that it take appropriate actions authorized under the jurisdiction of the Department of Human Services to ensure that the medical assistance program is the payor of last resort;

(24) Annually submit a budget request for the next state fiscal year to the Governor;

(25) Identify and order the return of underpayments to providers;

(26) Maintain the confidentiality of all information and documents that are deemed confidential by law;

(27) Implement, facilitate, and maintain federally required directives and contracts required for Medicaid integrity programs;

(28) Implement and maintain a hotline for reporting complaints regarding fraud, waste, and abuse by providers;

(29) Audit, investigate, and access Medicaid encounter data, premium data, or other information from an entity contracted with for the purpose of serving Medicaid programs;

(30)(A) Promulgate administrative rules to establish policies and procedures for audits and investigations that are consistent with the duties of the Office of Medicaid Inspector General under this chapter.

(B) The rules shall be posted on the Office of Medicaid Inspector General's website;

(31) Identify conflicts between the Medicaid state plan, Department of Human Services rules, Medicaid provider manuals, Medicaid notices, or other guidance and recommend that the Department of Human Services reconcile inconsistencies;

(32) When conducting an audit, investigation, or review under this subchapter, classify violations as either:

(A) Errors that do not rise to the level of fraud or abuse; or

(B) Fraud or abuse;

(33)(A) If a credible allegation of fraud has been made, review provider records that have been the subject of a previous audit or review for the purpose of fraud investigation and referral.

(B) However, the Medicaid Inspector General shall not duplicate an audit of a contract, cost report, claim, bill, or expenditure of a medical assistance program fund that has been the subject of a previous audit or review by or on behalf of the Office of Medicaid Inspector General, the Medicaid Fraud Control Unit, or other federal agency with authority over the medical assistance program if the audit or review was performed in accordance with the Government Auditing Standards;

(34)(A) Utilize a quality improvement organization as part of the assessment of quality of services.

(B) The quality improvement organization shall refer all identified improper payments due to technical deficiencies, abuse, waste, or fraud to the Medicaid Inspector General for further investigation and appropriate action, including without limitation recovery; and

(35) Perform other functions necessary or appropriate to fulfill the duties and responsibilities of the Office of Medicaid Inspector General.

History. Acts 2013, No. 1499, § 2; 2019, No. 910, § 5262.

Amendments. The 2019 amendment added "in consultation with the Secretary of the Department of Inspector General" in the introductory language; inserted "the Secretary of the Department of Inspector General" in (5)(A); substituted "Secretary of the Department of Inspector General" for "Governor" in (13)(B)(i); and made stylistic changes.

20-77-2509. Reports required of Medicaid Inspector General — Definition.

(a) The Medicaid Inspector General shall, no later than October 1 of each year, submit to the Secretary of the Department of Inspector

General, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, Arkansas Legislative Audit, the Legislative Council, and the Attorney General a report summarizing the activities of the Office of Medicaid Inspector General during the preceding calendar year.

(b) The report required under subsection (a) of this section shall include without limitation:

(1) The number, subject, and other relevant characteristics of:

(A) Investigations initiated and completed, including without limitation outcome, region, source of complaint, and whether or not the investigation was conducted jointly with the Attorney General;

(B) Audits initiated and completed, including without limitation outcome, region, the reason for the audit, the total state and federal dollar value identified for recovery, the actual state and federal recovery from the audits, and the amount repaid to the Centers for Medicare & Medicaid Services;

(C) Administrative actions initiated and completed, including without limitation outcome, region, and type;

(D)(i) Referrals for prosecution to the Attorney General and to federal or state law enforcement agencies and referrals to licensing authorities.

(ii) Information reported under subdivision (b)(1)(D)(i) of this section shall include without limitation the status and region of an administrative action;

(E) Civil actions initiated by the office related to improper payments, the resulting civil settlements entered, overpayments identified, and the total dollar value identified and collected; and

(F) Administrative and education activities conducted to improve compliance with Medicaid program policies and requirements; and

(2)(A) A narrative that evaluates the office's performance, describes specific problems with the procedures and agreements required under this section, discusses other matters that may have impaired the office's effectiveness, and summarizes the total savings to the state medical assistance program.

(B)(i) In addition to total savings, the narrative shall detail net savings in state funds.

(ii) As used in subdivision (b)(2)(B)(i) of this section, "net savings" means amounts recovered by the office less payments made to the Centers for Medicare & Medicaid Services and the costs of state administrative procedures.

(c) The office may subpoena individuals, books, electronic and other records, and documents that are necessary for the completion of reports under this section.

(d)(1) In making the report required under subsection (a) of this section, the Medicaid Inspector General shall not disclose information that jeopardizes an ongoing investigation or proceeding.

(2) The Medicaid Inspector General may disclose information in the report required under subsection (a) of this section if the information

does not jeopardize an ongoing investigation or proceeding and the Medicaid Inspector General fully apprises the designated recipients of the scope and quality of the office's activities.

(e) Quarterly by April 1, July 1, October 1, and January 1 of each year, the Medicaid Inspector General shall submit to the Secretary of the Department of the Inspector General, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, Arkansas Legislative Audit, the Legislative Council, and the Attorney General an accountability statement providing a statistical profile of the referrals made to the Medicaid Fraud Control Unit of the Office of the Attorney General, audits, investigations, and recoveries.

History. Acts 2013, No. 1499, § 2; 2019, No. 910, §§ 5263, 5264.

Amendments. The 2019 amendment substituted "Secretary of the Department of Inspector General" for "Governor" in (a); and substituted "Medicaid Inspector General" for "inspector" in (d)(1), twice in (d)(2), and in (e).

20-77-2510. Department of Human Services consultation with Office of Medicaid Inspector General.

(a) The Department of Human Services shall consult with the Office of Medicaid Inspector General regarding an activity undertaken by a fiscal intermediary or fiscal agent pertaining to suspected fraud, waste, or abuse.

(b) The department, in consultation with the office, shall:

(1) Develop, test, recommend, and implement methods to strengthen the capability of the Medicaid Management Information System to detect and control fraud, waste, and abuse and improve expenditure accountability;

(2)(A) Enter into agreement with a fiscal agent in collaboration with the office's data mining technology to develop, test, and implement the new methods under subdivision (b)(1) of this section.

(B) A collaborative agreement with the office under subdivision (b)(2)(A) of this section shall be made with an agent that has demonstrated expertise in the areas addressed by the agreement;

(3)(A) Develop, test, recommend, and implement an automated process to improve the coordination of benefits between the medical assistance program and other sources of coverage for medical assistance recipients.

(B)(i) An automated process under subdivision (b)(3)(A) of this section initially shall examine the savings potential to the medical assistance program through retrospective review of claims paid.

(ii) The examination under subdivision (b)(3)(B)(i) of this section shall be completed no later than January 1, 2014.

(iii) If, based upon the initial experience under subdivision (b)(3)(B)(i) of this section, the Medicaid Inspector General deems the automated process to be capable of including or moving to a prospective review with negligible effect on the turnaround of claims for provider payment or on recipient access to services, the inspector in

subsequent tests shall examine the savings potential through prospective, pre-claims payment review;

(4) Take all reasonable and necessary actions to intensify the state's current level of monitoring, analyzing, reporting, and responding to medical assistance program claims data maintained by the state's Medicaid Management Information System fiscal agents and ensure that any data abnormalities identified are reported to the office for appropriate action;

(5) Make efforts to improve the utilization of data in order to better assist the office in identifying fraud and abuse within the medical assistance program and to identify and implement further program and patient care reforms for the improvement of the program;

(6) Identify additional data elements that are maintained and otherwise accessible by the state, directly or through any of its contractors, that would, if coordinated with medical assistance data, further assist the office in increasing the effectiveness of data analysis for the management of the medical assistance program;

(7) Provide or arrange in-service training for state and county medical assistance personnel to increase the capability for state and local data analysis to move toward a more cost-effective operation of the medical assistance program;

(8)(A) No later than January 1, 2014, assist the office in developing, testing, and implementing an automated process for the targeted review of claims, services, and populations or a combination of claims, services, and populations.

(B) A review under subdivision (b)(8)(A) of this section is to identify statistical aberrations in the use or billing of the services and to assist in the development and implementation of measures to ensure that service use and billing are appropriate to recipients' needs; and

(9) Pay providers for underpayments identified through actions of the office.

(c)(1) The methods developed and recommended under subdivision (b)(1) of this section shall address without limitation the development, testing, and implementation of an automated claims review process that, before payment, shall subject a medical assistance program services claim to review for proper coding and another review as may be necessary.

(2) Services subject to review shall be based on:

(A) The expected cost-effectiveness of reviewing the service;

(B) The capabilities of the automated system for conducting the review; and

(C) The potential to implement the review with negligible effect on the turnaround of claims for provider payment or on recipient access to necessary services.

(3) A review under subdivision (c)(2) of this section shall be designed to provide for the efficient and effective operation of the medical assistance program claims payment system by performing functions, including without limitation:

(A) Capturing coding errors, misjudgments, or incorrect or multiple billing for the same service; and

(B) Possible excesses in billing or service use, whether intentional or unintentional.

(d)(1) The Secretary of the Department of Human Services in conjunction with the office shall prepare and submit an interim report to the Governor and the cochairs of the Legislative Council on the implementation of the initiatives under this section annually.

(2) The report under subdivision (d)(1) of this section shall also include a recommendation for a revision that would further facilitate the goals of this section, including recommendations for expansion.

(e) Applicable medical assistance program rules, provider manuals, and administrative policies, procedures, and guidance shall be posted on the office's website, or by a link from the website to the department's website.

History. Acts 2013, No. 1499, § 2; 2019, No. 389, § 79; 2019, No. 910, § 5237.

A.C.R.C. Notes. Acts 2019, No. 389, § 88, provided: "CONSTRUCTION AND LEGISLATIVE INTENT. It is the intent of the General Assembly that:

"(1) The enactment and adoption of this act shall not expressly or impliedly repeal an act passed during the regular session of the Ninety-Second General Assembly;

"(2) To the extent that a conflict exists between an act of the regular session of the Ninety-Second General Assembly and this act:

"(A) The act of the regular session of the Ninety-Second General Assembly shall be treated as a subsequent act passed by the General Assembly for the purposes of:

"(i) Giving the act of the regular session of the Ninety-Second General Assembly its full force and effect; and

"(ii) Amending or repealing the appropriate parts of the Arkansas Code of 1987; and

"(B) Section 1-2-107 shall not apply; and

"(3) This act shall make only technical, not substantive, changes to the Arkansas Code of 1987."

Amendments. The 2019 amendment by No. 389 deleted (d); redesignated (e) as (d); and substituted "shall be" for "will be" in (e).

The 2019 amendment by No. 910, in (d)(1), deleted "No later than December 1, 2013" from the beginning, substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services", and added "annually" at the end.

CHAPTER 78

CHILD CARE

SUBCHAPTER.

Subchapter 1 — General Provisions

Effective Dates. Acts 2019, No. 986, § 52: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2019 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2019 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2019".

20-78-108. University of Arkansas for Medical Sciences — Building Effective Services for Trauma — Report.

The University of Arkansas for Medical Sciences shall report quarterly each fiscal year to the Legislative Council on program activities and the expenditure of funds from the Psychiatric Research Institute and Department of Pediatrics appropriation for Building Effective Services for Trauma programs provided to children and adolescents.

History. Acts 2019, No. 986, § 47.

Subchapter 2 — Childcare Facility Licensing Act

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-78-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) "Child Care Appeal Review Panel" or "panel" means an eleven-member body under the Department of Human Services which shall serve as a review and appeal body regarding licensure or registration actions.

(B)(i) The panel shall consist of eleven (11) members, including the following:

(a) Three (3) early childhood professionals;

(b) One (1) pediatric health professional;

(c) One (1) parent of a child in a licensed early childhood program;

(d) The Director of the Division of Child Care and Early Childhood Education or his or her designee who shall serve as Chair of the Child Care Appeal Review Panel and shall not vote; and

(e) Five (5) licensed childcare providers representing a diversity of childcare settings.

(ii) Legal counsel from the Office of the Attorney General shall serve as a facilitator of the panel and shall not serve as a voting member.

(iii) Alternates shall be chosen to serve during times of absence or in cases of conflict of interest. Five (5) alternates shall be chosen as follows:

(a) One (1) early childhood professional;

(b) One (1) pediatric health professional;

(c) One (1) parent of a child in a licensed early childhood program; and

(d) Two (2) licensed childcare providers.

(iv) Members of the panel shall not be members of the Arkansas Early Childhood Commission.

(C)(i) The commission, from applications submitted, shall make panel selections from persons meeting the qualifications for service and exhibiting a willingness and time commitment to serve on the panel.

(ii) Panel members may be replaced under the same guidelines as commission members.

(D)(i) Members of the panel shall serve for three-year terms, not to exceed six (6) consecutive years of service on the panel.

(ii) Members from the Office of the Attorney General and the director shall hold permanent offices.

(E) Members of the panel shall receive no compensation other than normal state reimbursement for travel, meals, and lodging when applicable.

(F) The panel shall schedule monthly meetings and may meet more often as necessary.

(G) A majority of the panel shall constitute a quorum, and a majority of those present may decide any issue before the panel. In the event of a tie vote by the panel, the Division of Child Care and Early Childhood Education decision shall stand.

(H)(i) Decisions of the panel shall be the final administrative appeal.

(ii) Providers or the Division of Child Care and Early Childhood Education may appeal the panel's findings to the circuit court of the licensee's county of residence or to the Pulaski County Circuit Court.

(I) There shall be no monetary liability on the part of and no cause of action for damages shall arise against any member of the panel for any act or proceeding undertaken or performed within the scope of the functions of the panel if the panel member acts without malice or fraud; and

(2)(A)(i) "Childcare facility" means any facility which provides care, training, education, or supervision for any unrelated minor child, whether or not the facility is operated for profit and whether or not the facility makes a charge for the services offered by it.

(ii) For the purposes of this subdivision (2), "related minor child" means a minor child related by blood, marriage, or adoption to the owner or operator of the facility or a minor child who is a ward of the owner or operator of the facility pursuant to a guardianship order issued by an Arkansas court of competent jurisdiction.

(B) This definition includes, but is not limited to, a nursery, a nursery school, a kindergarten, a daycare center, or a family daycare home.

(C) In any case where a facility or the owner or operator thereof is appointed guardian of a total of ten (10) or more minors, it shall be presumed that the facility, owner, or operator is engaged in child care and shall be subject to childcare facility licensure.

(D) However, this definition does not include:

(i) Special schools or classes operated solely for religious instruction;

(ii) Facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or persons in charge of the children are attending church services, shopping, or engaging in other activities during the periods;

(iii) Any educational facility, whether private or public, which operates solely for educational purposes in grades one (1) or above and does not provide any custodial care;

(iv) Kindergartens operated as a part of the public schools of this state;

(v) Any situation, arrangement, or agreement by which one (1) or more persons care for fewer than six (6) children from more than one (1) family at the same time;

(vi) Any educational facility, whether public or private, which operates a kindergarten program in conjunction with grades one (1) and above and provides short-term custodial care before or following classes for those students;

(vii)*(a)* Any recreational facility or program, whether public or private, which operates solely as a place of recreation for minor children.

(b) For purposes of this subdivision (2), a "recreational facility or program" is defined as a facility or program which operates with children arriving and leaving voluntarily for scheduled classes, activities, practice, games, and meetings;

(viii) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents, foster home, group home, or custodial institution. Those facilities shall be subject to program requirements modeled on nationally recognized correctional and child welfare standards, which shall be developed, administered, and monitored by the Division of Youth Services; and

(ix) The Arkansas School for Mathematics, Sciences, and the Arts.

(3) [Repealed.]

(4) [Repealed.]

(5) [Repealed.]

History. Acts 1969, No. 434, § 2; 1973, No. 123, § 4; 1983, No. 331, § 1; A.S.A. 1947, § 83-902; Acts 1989, No. 399, § 1; 1991, No. 163, § 1; 1995, No. 1340, § 1; 1997, No. 948, § 2; 1997, No. 1132, § 1; 1999, No. 1222, § 6; 2019, No. 389, § 80.

Amendments. The 2019 amendment repealed (3) through (5).

20-78-203. Penalties.

(a)(1) Any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter shall be guilty of a violation and upon conviction shall be fined in any sum not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100).

(2) Each day of the violation shall constitute a separate offense.

(b)(1) The Division of Child Care and Early Childhood Education is authorized to impose monetary fines as civil penalties to be paid for failure to comply with the provisions of this subchapter or the rules promulgated pursuant thereto.

(2) In determining whether a civil penalty is to be imposed, the following factors shall be considered by the division:

(A) The gravity of the violation, including the probability that death or serious physical harm to a child will result or has resulted, the severity and scope of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated;

(B)(i) The exercise of good faith.

(ii) Indications of good faith include, but are not limited to, awareness of the applicable statutes and rules and reasonable diligence in securing compliance, prior accomplishments manifesting the desire to comply with the requirements, efforts to correct, and any other mitigating factors in favor of the operator;

(C) Any relevant previous violations committed; and

(D) The financial benefit of committing or continuing the violation.

(c) Before the imposition of monetary fines, the division shall provide notice and an opportunity to be heard before the Child Care Appeal Review Panel in accordance with hearing procedures in effect for the revocation or suspension of licenses.

(d) With the review and approval of the Arkansas Early Childhood Commission, the division shall publish and promulgate rules classifying violations as follows:

(1)(A)(i) Class A violations involve essential standards that must be met for substantial compliance with licensing requirements.

(ii) These standards address fire, health, safety, nutrition, staff-to-child ratio, and space.

(B)(i) Operation of an unlicensed childcare facility shall be considered a Class A violation.

(ii) However, the definition of unlicensed childcare facility shall not be interpreted to include exempt childcare facilities as defined in § 20-78-209.

(C) Class A violations are subject to a civil penalty of one hundred dollars ($100) for each violation; and

(2)(A) Class B violations involve administrative standards and standards that do not directly threaten the immediate health, safety, or welfare of the children.

(B) Class B violations are subject to a civil penalty of fifty dollars ($50.00) for each violation.

(e)(1) Each day of occurrence of a Class A or Class B violation shall constitute a separate violation.

(2) Aggregate fines assessed for violation in any one (1) month shall not exceed five hundred dollars ($500) for Class A violations or two hundred fifty dollars ($250) for Class B violations.

(f)(1) When a childcare facility has been found by the division to have committed Class A or Class B violations, then upon final administrative determination by the panel, notice shall be posted in the childcare facility stating the violations found by the division to have occurred and the current status of the license.

(2) This notice shall be posted in the childcare facility in a conspicuous place clearly visible to all staff, to all other individuals in the childcare facility, and to all visitors to the childcare facility.

(g)(1) Failure to post a proper notice as required by this section shall be considered to be a Class B violation for which civil penalties may be imposed as authorized by this section.

(2) Each day of noncompliance shall constitute a separate offense.

History. Acts 1969, No. 434, § 14; A.S.A. 1947, § 83-914; Acts 1987, No. 856, § 1; 1991, No. 888, § 1; 1997, No. 1132, § 2; 1999, No. 1222, § 7; 2005, No. 1994, § 140; 2019, No. 315, §§ 2271-2274.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(1), (b)(2)(A), and (b)(2)(B)(ii); and deleted "and regulations" following "rules" in the introductory language of (d).

20-78-205. Division of Child Care and Early Childhood Education.

(a) There is created the Division of Child Care and Early Childhood Education within the Department of Human Services. In creating the division, the General Assembly intends for the following to be maintained and enhanced:

(1) Coordination of existing early childhood education and childcare programs;

(2) Placement of children in quality early childhood programs which support their development and readiness for school;

(3) Development of new childcare services under welfare reform which promote the developmental needs of children receiving transitional employment assistance benefits or other forms of public assistance;

(4) Quality program standards for all early childhood and childcare programs;

(5) State support for early childhood and childcare programs to attain quality program standards;

(6) Economic and cultural integration of children in early childhood programs;

(7) Access to additional support services for early childhood and childcare programs, such as healthcare and nutrition services;

(8) Career development opportunities for early childhood program staff;

(9) On-going interagency planning and collaboration in regard to early childhood and child care;

(10) Parent support and education in choosing appropriate early childhood programs for their children; and

(11) State support for local leadership, program innovation, and excellence in early childhood and care programs.

(b) The Division of Child Care and Early Childhood Education shall have the following duties:

(1) Administration of the Child Care and Development Block Grant and other childcare funds, state and federal, that are available to the department;

(2) Administration of the Arkansas Better Chance Program, under interagency agreement with the Division of Elementary and Secondary Education;

(3) Administration of the Arkansas Special Nutrition Program;

(4) Establishment and promulgation of rules setting standards governing the granting, revocation, refusal, and suspension of licenses for a childcare facility and the operation of childcare facilities in this state, as defined by § 20-78-202;

(5) Staff support for the operation of the Arkansas Early Childhood Commission;

(6) Provide consultative resources for the private sector in developing childcare programs;

(7) Provide consultative resources for the private sector in developing childcare facilities;

(8) Solicit grant funds for exemplary early childhood and childcare programs; and

(9) Administration of the birth through prekindergarten teaching credential and the promulgation of rules to implement the teaching credential program under § 20-78-801 et seq.

(c)(1) In addition to any other rights, powers, functions, and duties granted by law to the Division of Child Care and Early Childhood Education, the department is hereby authorized to promote and cooperate in the establishment of a foundation under the Arkansas nonprofit corporation law and to accept support and assistance in the form of money, property, or otherwise from the foundation to be used to enhance quality, affordability, and availability of child care and early education for all children in the state.

(2) If a foundation is established for the early care and education of children and if the department shares resources or facilities with the foundation or accepts support and assistance from the foundation, the foundation shall file annually a report with the Governor, the Legislative Council, and the Legislative Joint Auditing Committee showing the amount and source of all gifts, grants, and donations of money or property received by the foundation and all expenditures or other dispositions of money or property by the foundation during the preceding year.

(3) After consultation with the commission, the Director of the Division of Child Care and Early Childhood Education shall prepare rules for the use of foundation funds. The director shall submit the proposed rules to the Legislative Council for its review.

(4) No person over whom the department has day-to-day managerial control shall receive compensation or remuneration from funds not in the State Treasury.

(d)(1) The Division of Child Care and Early Childhood Education shall create and make available on the website of the department a form and graphical chart that concisely explains the:

(A) Minimum licensing requirements for a licensed home;

(B) Minimum licensing requirements for a licensed childcare center;

(C) Procedure for obtaining licensure as a licensed home or licensed childcare center;

(D) Registration requirements for a registered childcare family home;

(E) Procedure for registering as a registered childcare family home;

(F) Voluntary registry of daycare family homes;

(G) Procedure for registering a daycare family home with the voluntary registry;

(H) Availability of federal or state funds, grants, programs, or other financial assistance, including without limitation the:

(i) Community Facilities Guaranteed Loan Program;

(ii) Community Development Block Grant;

(iii) Child and Adult Care Food Program;

(iv) Child Care and Development Block Grant;

(v) Early Head Start-Child Care Partnership Grant;

(vi) Arkansas Better Chance Program; and

(vii) Arkansas Special Nutrition Program; and

(I) Availability of a federal or state tax credit or other federal or state tax benefit, including without limitation the employer-provided child care credit that is available to taxpayers under §§ 26-51-507 and 26-51-508.

(2) The Division of Child Care and Early Childhood Education shall place a form and graphical chart created in accordance with subdivision (d)(1) of this section in a conspicuous location on the website of the department.

History. Acts 1969, No. 434, § 12; 1973, No. 123, § 2; 1979, No. 904, § 1; A.S.A. 1947, § 83-911; Acts 1987, No. 856, § 1; 1989, No. 400, §§ 1, 2; 1995, No. 1280, §§ 13, 14; 1997, No. 250, § 205; 1997, No. 1132, § 4; 1999, No. 1222, § 9; 2001, No. 1271, § 1; 2009, No. 187, § 2; 2011, No. 1121, § 15; 2017, No. 576, § 1; 2019, No. 131, § 2; 2019, No. 910, §§ 2304-2307.

A.C.R.C. Notes. Acts 2019, No. 131, § 1, provided: "Legislative findings. The General Assembly finds that:

"(1) There is a lack of qualified and affordable child care facilities in rural areas in Arkansas;

"(2) Encouraging child care entrepreneurship will help increase the number of qualified and affordable child care facilities in Arkansas;

"(3) Current information on child care facility licensure and registration requirements is difficult to obtain and comprehend;

"(4) Some potential entrepreneurs may consider the prospect of opening a child care facility burdensome, overwhelming, and cost-prohibitive;

"(5) Arkansas provides two (2) forms of employer-provided child care under §§ 26-51-507 and 26-51-508;

"(6) Improving access to simplified information on child care facility licensure and registration requirements will assist entrepreneurs in opening child care facilities;

"(7) Improving the dissemination of information on financial incentives that are available, such as the employer-provided child care credits offered under §§ 26-51-507 and 26-51-508, may encourage entrepreneurs to open child care facilities; and

"(8) This act may help alleviate the lack of qualified and affordable child care facilities in rural areas in Arkansas."

Amendments. The 2019 amendment by No. 131 added (d).

The 2019 amendment by No. 910 substituted "Division of Child Care and Early Childhood Education" for "division" in the second sentence of the introductory language of (a), in the introductory language

of (b), and in (c)(1); and substituted "Division of Elementary and Secondary Education" for "Department of Education" in (b)(2).

20-78-206. Division of Child Care and Early Childhood Education — Rules.

(a)(1)(A) The Division of Child Care and Early Childhood Education shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, and suspension of licenses for a childcare facility and the operation of a childcare facility.

(B) In developing proposed rules, the division shall consult with the Secretary of the Department of Health or his or her designated representative in regard to rules relating to health.

(2)(A)(i) However, no childcare facility shall continue to admit a child who has not been age-appropriately immunized from poliomyelitis, diphtheria, tetanus, pertussis, red (rubeola) measles, rubella, and any other diseases as designated by the State Board of Health within fifteen (15) program days after the child's original admission.

(ii) The immunization shall be evidenced by a certificate of a licensed physician or a public health department acknowledging the immunization. The division shall consult with the Secretary of the Department of Education or his or her designated representative in regard to rules relating to education.

(B)(i) The provisions of subdivision (a)(2)(A) of this section pertaining to immunizations shall not apply if the parents or legal guardian of that child object thereto on the grounds that immunization conflicts with the religious or philosophical beliefs of the parent or guardian.

(ii) The parents or legal guardian of the child shall complete an annual application process developed in the rules of the Department of Health for medical, religious, and philosophical exemptions.

(iii) The rules developed by the Department of Health for medical, religious, and philosophical exemptions shall include, but not be limited to:

(a) A notarized statement requesting a religious, philosophical, or medical exemption from the Department of Health by the parents or legal guardian of the child regarding the objection;

(b) Completion of an educational component developed by the Department of Health that includes information on the risks and benefits of vaccination;

(c) An informed consent from the parents or guardian that shall include a signed statement of refusal to vaccinate based on the Department of Health's refusal-to-vaccinate form; and

(d) A signed statement of understanding that:

(1) At the discretion of the Department of Health, the unimmunized child or individual may be removed from day care or school during an outbreak if the child or individual is not fully vaccinated; and

(2) The child or individual shall not return to school until the

outbreak has been resolved and the Department of Health approves the return to school.

(iv) No exemptions may be granted under this subdivision (a)(2)(B) until the application process has been implemented by the Department of Health and completed by the applicant.

(v) Furthermore, the provisions of subdivision (a)(2)(A) of this section requiring pertussis vaccination shall not apply to any child with a sibling, either whole blood or half blood, who has had a serious adverse reaction to the pertussis antigen, which reaction resulted in a total permanent disability.

(3) The Secretary of the Department of Health and the Secretary of the Department of Education and their designated representatives are directed to cooperate with and assist the division in developing rules in the respective areas of health and education.

(4) In developing these rules, the division shall consult with such other agencies, organizations, or individuals as it shall deem appropriate.

(5) Rules promulgated by the division pursuant to this section may be amended by the division from time to time, provided that any amendment to the rules shall be published and furnished to all licensed childcare facilities and to all applicants for a license at least sixty (60) days before the effective date of the amendment.

(b) In establishing requirements and standards for the granting, revocation, refusal, and suspension of a license for a childcare facility, the division shall adopt such rules as will:

(1) Promote the health, safety, and welfare of children attending a childcare facility;

(2) Promote safe, comfortable, and healthy physical facilities for the children who attend the childcare facility;

(3) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(4) Ensure appropriate educational programs and activities; and

(5) Ensure adequate and healthy food service where food service is offered by the childcare facility.

(c)(1) Questions between providers and the division concerning substantial compliance with the published standards, founded licensing complaints, denials of alternative compliance requests, and adverse actions shall first be appealed through the division's internal appeal process and then may be appealed through the Child Care Appeal Review Panel for determination.

(2) The division shall follow the procedures prescribed for adjudication in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in exercising any power authorized by § 20-78-213.

(d) If, upon the filing of a petition for a judicial review, the reviewing court enters a stay prohibiting enforcement of a decision of the division, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay. If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(e) All rules promulgated pursuant to this section shall be reviewed by the Senate Committee on Children and Youth or an appropriate subcommittee thereof and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs.

(f)(1) Any person with reasonable cause to suspect that a childcare facility has violated any provision of this subchapter or any rule of the division may immediately notify the Department of Human Services.

(2) The Department of Human Services shall not release data that would identify the person who made the report or who cooperated in a subsequent investigation of a childcare facility unless a court of competent jurisdiction orders the release of information for good cause shown.

(3) Following the inspection and investigation of a childcare facility as provided under this subsection, the Department of Human Services shall, upon request, provide information to the person or agency reporting the suspected violation as to whether an investigation has been conducted.

(4) Willfully making false notification pursuant to this subsection shall be a Class C misdemeanor.

History. Acts 1969, No. 434, § 4; 1977, No. 349, § 2; A.S.A. 1947, §§ 83-904, 83-911.1; Acts 1991, No. 888, §§ 2, 4; 1995, No. 1280, § 15; 1997, No. 312, § 17; 1997, No. 870, § 1; 1997, No. 1132, § 5; 1999, No. 1222, § 10; 2003, No. 999, § 3; 2017, No. 576, §§ 2, 3; 2019, No. 315, §§ 2275-2280; 2019, No. 910, §§ 5103, 5104.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" throughout (a)(2), and in (a)(3), (a)(4), (b), and (e); and deleted "or regulation" following "rule" in (f)(1).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (a)(1)(B); and substituted "Secretary of the Department of Health and the Secretary of the Department of Education" for "director and the commissioner" in (a)(3).

20-78-207. Declaratory judgments on licensing rules.

Any rule promulgated by the Division of Child Care and Early Childhood Education under authority of § 20-78-206 or under any other childcare facility licensing law shall, at the suit of any interested person instituted in the Pulaski County Circuit Court, be subject to remedies provided by law for obtaining declaratory judgments. However, the division must be named a party defendant and summoned as in an action by ordinary proceedings.

History. Acts 1971, No. 715, § 1; A.S.A. 1947, § 83-917; Acts 1997, No. 1132, § 6; 2019, No. 315, § 2281.

Amendments. The 2019 amendment deleted "or regulations" following "rules" in the section heading; and deleted "or regulation" following "Any rule" in the first sentence.

20-78-209. License — Religious exception — Definitions.

(a) Any church or group of churches exempt from the state income tax levied by the Income Tax Act of 1929, § 26-51-101 et seq., when

operating a childcare facility shall be exempt from obtaining a license to operate the childcare facility upon the receipt by the Division of Child Care and Early Childhood Education of written request therefor. A written request shall be made by those churches desiring exemption to the division, which is mandated under the authority of this subchapter to license all childcare facilities.

(b)(1) In order to maintain an exempt status, the childcare facility shall maintain in its files verification that its childcare facility has met the required fire, safety, and health inspections on an annual basis and is in substantial compliance with published standards that similar nonexempt childcare facilities are required to meet.

(2) Visits to review and advise exempt childcare facilities shall be made as deemed necessary by the division to verify and maintain substantial compliance with all published standards for nonexempt childcare facilities.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child is not endangered.

(4) Standards for corporal punishment shall be as established by present rules unless alternative compliance is granted by the division.

(c)(1) Any questions of substantial compliance with the published standards, adverse actions, founded licensing complaints, and denied requests for alternative compliance shall be appealed first through the division's internal appeal process and then may be appealed to the Child Care Appeal Review Panel for determination.

(2) Final administrative actions of the division shall be pursued by either party in the court of competent jurisdiction in the resident county of the childcare facility under review.

(3) Challenge to the constitutionality or reasonableness of any rule or statute may be made before any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) As used in this section, the term "substantial compliance" and as used in §§ 20-78-201 — 20-78-206, 20-78-208, 20-78-210 — 20-78-214, and 20-78-218, the term "is being operated in accordance with this act" shall each mean that a church-operated exempt or a nonexempt childcare facility is being operated within the minimum requirements for substantial compliance as promulgated by the division. It is the intent and purpose of this section that the term "substantial compliance" be applicable to all childcare facilities.

(e) This section is cumulative to all other acts heretofore enacted.

History. Acts 1983, No. 245, §§ 1-4, 6; A.S.A. 1947, §§ 83-920 — 83-924; Acts 1991, No. 627, § 1; 1997, No. 1132, § 8; 1999, No. 1222, § 11; 2019, No. 315, §§ 2282, 2283.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b)(4); and substituted "rule" for "regulation" in (c)(3).

20-78-210. License — Application and issuance.

(a) Any person, partnership, group, corporation, organization, or association desiring to operate a childcare facility shall first make application for a license for a childcare facility to the Division of Child Care and Early Childhood Education on the application forms furnished for this purpose by the division.

(b) The division shall act on any application within sixty (60) days after it has been received by the division.

(c) If an applicant meets the requirements of this subchapter and the published rules of the division regarding minimum standards for a childcare facility, then the applicant shall be granted a license by the division as a childcare facility. This license shall continue in effect until revoked or suspended as provided in this subchapter.

(d) In issuing a license for a childcare facility, the division may limit the number of children who may be served by that childcare facility.

(e) In issuing an initial license or reviewing a current license for a childcare facility, the division shall require that during regular business hours at least one (1) adult member of the staff who is certified in infant and child cardiopulmonary resuscitation shall be present within the physical confines of the childcare facility.

History. Acts 1969, No. 434, § 5; A.S.A. 1947, § 83-905; Acts 1991, No. 627, § 2; 1993, No. 493, § 1; 1997, No. 1132, § 9; 2019, No. 315, § 2284.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in the first sentence of (c).

20-78-211. License — Provisional.

(a) If the Division of Child Care and Early Childhood Education finds that an applicant for a childcare facility meets the licensing requirements for a childcare facility in the main and has a reasonable expectation of correcting deficiencies in a reasonable time, then the division may, in its discretion, issue a provisional license for a childcare facility.

(b) The provisional license shall be in effect for a reasonable time, which time shall be specified in the provisional license.

(c) Issuance of provisional licenses shall be in accordance with the published rules adopted by the division in accordance with this subchapter.

History. Acts 1969, No. 434, § 6; A.S.A. 1947, § 83-906; Acts 1997, No. 1132, § 10; 2019, No. 315, § 2285.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (c).

20-78-213. License — Denial, revocation, or suspension.

(a) The Division of Child Care and Early Childhood Education shall have the power to deny, revoke, or suspend a license for a childcare facility if an applicant or licensee has failed to comply with the

provisions of this subchapter or any published rule of the division, subject to appeal before the Child Care Appeal Review Panel.

(b) If a license is denied, revoked, or suspended, the denial, revocation, or suspension shall be effective when made. The division shall notify the applicant or licensee of the action in writing and set out the basis for the denial, revocation, or suspension of the license.

History. Acts 1969, No. 434, § 10; A.S.A. 1947, § 83-910; Acts 1997, No. 1132, § 12; 1999, No. 1222, § 12; 2019, No. 315, § 2286.

Amendments. The 2019 amendment deleted "or regulation" following "rule" in (a).

20-78-214. Inspections and investigations of childcare facilities and personnel — Child abuse.

(a) The Division of Child Care and Early Childhood Education or any other agency of the State of Arkansas which the division asks to assist it is authorized to make an inspection and investigation of any proposed or operating childcare facility and of any personnel connected with that childcare facility to the extent that an inspection and investigation is required to determine whether this childcare facility will be or is being operated in accordance with this section and with the published rules of the division for childcare facilities.

(b) However, the division or any other public agency having authority or responsibility with respect to child abuse shall have the authority to investigate any alleged or suspected child abuse in any childcare facility. Nothing contained in this section shall be construed to limit or restrict that authority.

History. Acts 1985, No. 697, § 1; A.S.A. 1947, § 83-908.1; Acts 1997, No. 1132, § 13; 2019, No. 315, § 2287.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a).

20-78-215. Child sexual abuse — Federal funds — Legislative intent.

(a)(1) By the enactment of this section, it is the specific intent of the General Assembly to ensure that the State of Arkansas may qualify for the maximum amount of federal funds made available through Pub. L. No. 98-473 or any subsequent and related federal legislation enacted for use in reducing the incidence of child sexual abuse.

(2) Specifically, rules promulgated by the Secretary of the Department of Human Services pursuant to this section may address federally mandated requirements for employment history and background checks and nationwide criminal record checks, as may be necessary in accordance with the provisions of Pub. L. No. 92-544, for all operators, staff, or employees, or prospective operators, staff, or employees of the childcare facilities or programs as defined in this section.

(b) In order to enable the State of Arkansas to fully participate and share in federal funds made available to the states through the Social Services Block Grant Act, or otherwise for the purposes of reducing and

eliminating the incidence of child sexual abuse in childcare facilities, as defined in § 20-78-202(2), the secretary is authorized at his or her discretion to promulgate, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., rules implementing such federal requirements as may be placed upon the states to qualify for the funds.

(c) Persons, other than the State of Arkansas, shall not acquire actionable right by virtue of this section.

History. Acts 1985, No. 1050, §§ 1-3; A.S.A. 1947, §§ 83-927 — 83-929; Acts 1997, No. 1132, § 14; 2019, No. 315, §§ 2288, 2289; 2019, No. 910, §§ 5238, 5239.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (a)(2); and deleted "and regulations" following "rules" in (b).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Human Services" for "Director of the Department of Human Services" in (a)(2); and substituted "secretary" for "director" in (b).

20-78-216. Records and reports.

The Division of Child Care and Early Childhood Education may by published rules require that a licensed childcare facility keep and make available to the division records and periodic reports as shall be necessary to assist the division in determining whether the requirements of this subchapter and of the division's rules regarding childcare facilities are being complied with.

History. Acts 1969, No. 434, § 9; A.S.A. 1947, § 83-909; Acts 1997, No. 1132, § 15; 2019, No. 315, § 2290.

Amendments. The 2019 amendment deleted "and regulations" following "rules" twice.

20-78-217. Smoking prohibited — Legislative intent.

(a) Whereas, health authorities have established that smoking is not conducive to good health and that children exposed to smoking face a potential health hazard, therefore, it is the intent of the Seventy-Fifth General Assembly to ban smoking in the physical confines of the day care centers licensed by the Division of Child Care and Early Childhood Education.

(b) The division is directed to promulgate sufficient rules to ensure that state licensing requirements for day care center operations contain a stipulation which bans smoking within the physical confines of each day care center.

History. Acts 1985, No. 862, §§ 1, 2; A.S.A. 1947, §§ 83-925, 83-926; Acts 1997, No. 1132, § 16; 2019, No. 315, § 2291.

Amendments. The 2019 amendment substituted "rules" for "regulations" in (b).

20-78-218. Administration of subchapter.

The Division of Child Care and Early Childhood Education shall continue to be the administrative agency to administer the provisions of

this subchapter in accordance with the rules and standards for the licensing and operation of childcare facilities as promulgated by the division.

History. Acts 1987, No. 856, § 1; 1997, No. 1132, § 17; 2019, No. 315, § 2292.

Amendments. The 2019 amendment deleted "regulations" following "rules.

20-78-219. Fines and penalties — Disposition of funds.

(a) If any licensee fails to pay any monetary fine imposed as a civil penalty within sixty (60) days of the Division of Child Care and Early Childhood Education's decision imposing the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action.

(b)(1) All fines and penalties collected under the provisions of this subchapter shall be special revenues to be deposited into the State Treasury to the credit of a special fund to be known as the "Child Care Fund", to be used by the division to meet the costs of conducting the statewide criminal records checks required under § 20-78-606 or to provide grants to childcare facilities for enhancement of the childcare facility or for training of personnel in childcare facilities under the direction of the division.

(2) Subject to those rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Human Services is authorized to transfer all unexpended funds relative to the fines and penalties collected from childcare facilities as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1987, No. 856, § 1; 1997, No. 1132, § 18; 2009, No. 762, § 9; 2019, No. 315, § 2293.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b)(2).

20-78-221. Voluntary registration.

(a) Registry. There shall be created a voluntary registry of day care family homes that are not required by this subchapter to be licensed by the Division of Child Care and Early Childhood Education. The registry shall be maintained by the division.

(b) Procedure for Registration. Day care family homes exempt from licensure may voluntarily register the home with the registry established, operated, and maintained by the division. A person wishing to participate in the voluntary registry shall make an application to the division. Upon receipt of the application, the division shall review the applicant's written application, qualifications, and proposed operation to determine compliance with registry rules. The division shall issue a certificate of registration to the applicant which authorizes the applicant to operate a registered day care family home only upon final

determination of an applicant's compliance with the rules established for registration.

(c) Rules.

(1) The division is authorized to establish rules that a day care family home shall meet in order to be registered by the Department of Human Services.

(2) The division shall have the right to enter and inspect a registered day care family home if there is reason to believe that the home is in violation of the registry rules and to ensure compliance with the rules established by the division.

(d) Removal or Denial of Registration. If after review of the submitted application, it is determined that the day care family home is not in compliance with the rules for the registry as established by the division, the division shall immediately deny or remove the home from the registry. Upon removal from the registry, a day care family home may no longer be considered a registered home.

(e) Right to Appeal.

(1) A person whose registration has been denied or who is removed from the voluntary registry due to violation of rules may appeal the action to the department in accordance with Arkansas law and state rules.

(2) The appeal does not stay the denial or removal from the registry.

(f) Renewal of Registration.

(1) The registration of the day care family home shall continue in effect until removed as provided in this subchapter.

(2) The division shall have the right to investigate and inspect the premises when there is reason to believe that violations exist and to make sure that the home is still in compliance with the rules established for the voluntary registry of day care family homes.

(g) Surrender of Registration. At any time, the owner of the registered day care family home may voluntarily surrender his or her certificate of registration. Upon surrender, that home shall be removed from the registry of day care family homes operated by the division.

History. Acts 1989, No. 46, § 1; 1997, No. 1132, § 20; 2019, No. 315, §§ 2294, 2295.

Amendments. The 2019 amendment deleted "and regulations" following "rules" throughout (b) through (e), and in (f)(2).

Subchapter 5 — Early Childhood Commission

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act estab-

lishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-78-501. Creation — Composition — Meetings.

(a)(1) There is hereby established the Arkansas Early Childhood Commission, to be composed of eleven (11) members.

(2) The Chair of the Arkansas Early Childhood Commission shall be selected annually by majority vote of the commission.

(b) The following members of the commission shall be appointed by the Governor, subject to confirmation by the Senate:

(1) One (1) member affiliated with childcare provider agencies, organizations, or programs;

(2) One (1) member affiliated with the Arkansas Head Start State Collaboration Office;

(3) One (1) member affiliated with a Home Instruction for Parents of Preschool Youngsters program;

(4) One (1) member employed as an administrator by a public school district;

(5) One (1) member who is a parent of a child who attends a childcare program;

(6) One (1) member who is a clinical provider of childhood behavioral and mental health services specializing in prevention and early intervention; and

(7) One (1) member representing the Arkansas Association of Colleges for Teacher Education Council of Deans.

(c) The members identified in subsection (b) of this section shall serve three-year terms.

(d) The remaining membership shall consist of:

(1) The Chair of the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs or his or her designee;

(2) The Chair of the Senate Committee on Children and Youth or his or her designee;

(3) The Chair of the House Committee on Education or his or her designee; and

(4) The Chair of the Senate Committee on Education or his or her designee.

(e)(1) The commission shall meet at least quarterly and at such other times as may be deemed necessary for the performance of the duties of the commission.

(2) Special meetings of the commission may be called by the Chair of the Arkansas Early Childhood Commission or by agreement of a majority of the members of the commission.

(f)(1) The members of the commission shall serve without compensation or per diem but shall be entitled to reimbursement for actual expenses incurred in the performance of duties as members of the commission. Expense reimbursement shall be in accordance with state travel and official business expense reimbursement procedures and rules.

(2) Expense reimbursement shall be paid from funds appropriated to the Division of Child Care and Early Childhood Education for this purpose.

(g) The commission shall report annually to the House Committee on Education and the Senate Committee on Education as set out in § 20-78-502.

History. Acts 1989, No. 202, § 1; 1997, No. 250, § 207; 1997 No. 1132, § 24; 1999, No. 324, § 1; 1999, No. 1560, § 1; 2001, No. 1288, § 18; 2009, No. 28, § 2; 2011, No. 1121, § 16; 2013, No. 403, § 2; 2017, No. 540, § 50; 2019, No. 315, § 2296.

Amendments. The 2019 amendment substituted "rules" for "regulations" in the second sentence of (f)(1).

20-78-502. Duties — Assistance.

(a) The Arkansas Early Childhood Commission shall have the following duties and responsibilities and shall annually report its progress toward the following:

(1) Advising the Division of Child Care and Early Childhood Education on the administration of the Arkansas Child Care Facilities Loan Guarantee Trust Fund;

(2) Providing technical assistance in the design of training programs to enhance the skills of professionals in early childhood programs, including the development of an annual comprehensive training plan for providers;

(3) Examining the recommendations of national and regional groups and systems producing scientifically proven and cost-effective results used by others to provide child care and early childhood services;

(4) Assisting in the development of a comprehensive long-range plan for the expansion, development, and implementation of early childhood programs in Arkansas, including recommending the allocation and expenditures of funds appropriated to the Arkansas Better Chance Program;

(5) Facilitating coordination and communication among state agencies providing early childhood programs in order to promote nonduplication and coordination of services in the programs and recommending a structure for the administration of the currently existing programs and the recommended programs;

(6) Advising the Division of Elementary and Secondary Education and other appropriate state agencies on the development of program-

matic standards for early childhood programs to be funded with funds appropriated to the Division of Elementary and Secondary Education or to such other state agencies as may receive appropriations for such purposes;

(7) Promoting strong local community support for early childhood education programs;

(8) Promoting public awareness of child care and early childhood programs; and

(9) From the applications submitted, making Child Care Appeal Review Panel selections from persons who meet the qualifications for service and who exhibit a willingness and time commitment to serve on the panel.

(b) The Division of Child Care and Early Childhood Education shall assist the commission in carrying out its duties and responsibilities.

History. Acts 1989, No. 202, § 1; 1997, No. 1132, § 25; 1999, No. 324, § 2; 1999, No. 1222, § 13; 2017, No. 576, § 4; 2019, No. 910, §§ 2308, 2309.

Amendments. The 2019 amendment, in (a)(6), substituted the first occurrence of "Division of Elementary and Secondary Education" for "Department of Education", and the second occurrence of "Division of Elementary and Secondary Education" for "department"; and substituted "Division of Child Care and Early Childhood Education" for "division" in (b).

20-78-505. Loan guarantees — Annual report.

(a) The Division of Child Care and Early Childhood Education is authorized to develop and implement, with the technical assistance of the Arkansas Early Childhood Commission, necessary rules to receive, review, and approve applications for loan deficiency guarantee assistance for expansion or development of childcare facilities in this state.

(b) The maximum loan guarantee amount approved by the division shall be modified as necessary to ensure adequate childcare financing availability.

(c) In guaranteeing loans under this subchapter, consideration shall be given to:

(1) Geographic distribution;

(2) Community need;

(3) Community income, with priority given to those communities with the lowest median family income;

(4) Proof of viable administrative and financial management; and

(5) Intended licensure of the facility.

(d) The division shall report each October to the Legislative Council on the status of the Arkansas Child Care Facilities Loan Guarantee Trust Fund.

History. Acts 1989, No. 202, § 1; 1997, No. 540, § 44; 1997, No. 1132, § 28; 2019, No. 315, § 2297.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (a).

Subchapter 7 — Prenatal and Early Childhood Nurse Home Visitation Program

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Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-78-703. Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(a) There is created the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(b) The council shall consist of eleven (11) members to be appointed by the Governor as follows:

(1) Three (3) members from the Department of Health to be appointed by the Governor after consulting the Secretary of the Department of Health and subject to confirmation by the Senate;

(2) Two (2) members from the College of Medicine of the University of Arkansas for Medical Sciences to be appointed by the Governor after consulting the Dean of the College of Medicine of the University of Arkansas for Medical Sciences and subject to confirmation by the Senate;

(3) One (1) member from the College of Nursing of the University of Arkansas for Medical Sciences to be appointed by the Governor after consulting the Dean of the College of Nursing of the University of Arkansas for Medical Sciences and subject to confirmation by the Senate;

(4) One (1) member from the Arkansas Nurses Association;

(5) One (1) member from the School of Social Work of the University of Arkansas at Little Rock to be appointed by the Governor after consulting the Director of the School of Social Work of the University of Arkansas at Little Rock and subject to confirmation by the Senate;

(6) One (1) member from the Division of Child Care and Early Childhood Education; and

(7) Two (2) members from the public at large, at least one (1) of whom shall be active in child advocacy within the state and one (1) of whom shall be African-American.

(c) The Director of the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program shall serve as an ex officio member of the council.

(d) Members shall be appointed for three-year staggered terms. The staggered terms shall be assigned by lot. The terms shall commence on January 15 of each year.

(e) In the event of a vacancy of one (1) of the members appointed by the Governor for any reason other than expiration of a regular term, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor, and that person shall possess the same qualifications as are required for initial appointment.

(f) Members of the council shall not be entitled to compensation for their services but may receive expense reimbursement in accordance with § 25-16-902 to be paid by the department.

(g) The council shall hold its first meeting during January 2000 at a place and time designated by the Governor.

(h) At the initial organizational meeting of the council, the members shall elect from among their number a chair and vice chair. Annually thereafter, a meeting shall be held to elect the Chair of the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council and the Vice Chair of the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(i)(1) Quarterly meetings of the council shall be held.

(2) Special meetings may be called by the chair or as provided by the rules of the council.

(j) The council shall monitor the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program as needed to ensure that the program is implemented according to the program training requirements, program protocols, program management information systems, and program evaluation requirements established by the department. The council shall evaluate the overall implementation of the program and include the evaluation, along with any recommendations concerning the selected entities or changes in the program training requirements, program protocols, program management information systems, or program evaluation requirements in the annual report submitted to the department.

(k) The program staff shall submit a written status report annually to the council.

History. Acts 1999, No. 1115, § 3; 2001, No. 237, § 2; 2015, No. 1100, § 54; 2017, No. 897, § 15; 2019, No. 910, § 5105.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in (b)(1).

20-78-708. Funding.

The Secretary of the Department of Health is authorized to utilize available general revenue savings and allowable federal funds in support of the activities described in this subchapter in the event that sufficient funds are not allocated for the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program herein. The secretary is authorized to transfer appropriations and funds as necessary but only for the purposes provided in this subchapter. Upon approval of the Chief Fiscal Officer of the State and review by the Legislative Council, the transfers shall be made upon the books of the Department of Finance and Administration, the Auditor of State, and the Treasurer of State.

History. Acts 1999, No. 1115, § 8; 2001, No. 237, § 3; 2019, No. 910, § 5106.

Amendments. The 2019 amendment substituted "Secretary of the Department of Health" for "Director of the Department of Health" in the first sentence and "secretary" for "director" in the second sentence.

CHAPTER 79

REHABILITATION SERVICES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

20-79-102. Caseworkers for the blind.

The deputy director of the appropriate division of the Department of Human Services is authorized and empowered to employ caseworkers for the blind, prepare rules governing personnel standards, define the duties of the caseworkers for the blind, and make such other rules as may be necessary to carry out the purpose of this section.

History. Acts 1955, No. 168, § 2; A.S.A. 1947, § 83-160; Acts 2019, No. 315, § 2298.

Amendments. The 2019 amendment substituted "rules" for "regulations" twice.

Subchapter 2 — Rehabilitation Act of Arkansas

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-79-202. Policy.

(a)(1) It is declared to be the policy of the State of Arkansas to provide needed and feasible rehabilitation services to eligible individuals with a disability throughout the state to the end that they may engage in useful and remunerative occupations to the extent of their capabilities.

(2) In rehabilitating individuals who may be expected to achieve the ability of independent living as to dispense with, or largely dispense with, the need for institutional care or, if not institutionalized, to dispense with, or largely dispense with, the need for an attendant, it is also declared to be the policy of the State of Arkansas to provide needed and feasible rehabilitation services to eligible individuals with a disability throughout the state, thereby increasing the social and economic well-being of themselves and their families and the productive capacity of the state and reducing the burden of dependency on families and taxpayers.

(b) Pursuant to this policy, rehabilitation services shall be provided to citizens throughout the state. The rehabilitation plan adopted pursuant to this subchapter shall be in effect in all political subdivisions of this state.

History. Acts 1955, No. 43, § 2; 1959, No. 34, § 2; A.S.A. 1947, § 80-2541; Acts 2019, No. 389, § 81.

Amendments. The 2019 amendment added the (a)(1) and (a)(2) designations; and substituted "individuals with a disability" for "disabled individuals and handicapped individuals" in (a)(1) and (a)(2).

20-79-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Employment disability" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in a substantial impairment of occupational performance;

(2) "Establishment of a workshop or rehabilitation facility" means:

(A) In the case of a workshop, the expansion, remodeling, or alteration of existing buildings to adapt them to workshop purposes or to increase employment opportunities, and the acquisition of inital equipment; and

(B) In the case of a rehabilitation facility, the expansion, remodeling, or alteration of existing buildings, the initial equipment of the buildings, and initial staffing thereof;

(3) "Individual with a disability" means any person who, as a result of a physical or mental disability:

(A) Has a substantial employment disability and who may, through receiving vocational rehabilitation services, be qualified for remunerative employment; or

(B) May achieve such ability of independent living, through receiving rehabilitation services, which will enable him or her to dispense with or largely dispense with the need for institutional care or attendant care in the household;

(4) "Maintenance" means money payment not exceeding the estimated cost of subsistence during the provision of rehabilitation services;

(5) "Nonprofit", when used with respect to a rehabilitation facility or workshop, means a rehabilitation facility or a workshop owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any shareholder or individual, and this income is exempt from taxation under section 101(6) of the Internal Revenue Code;

(6) "Person with a visual impairment" means a person who has:

(A) Not more than 20/200 central visual acuity in the better eye after correction; or

(B) An equally disabling loss of the visual field;

(7) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a disabled individual's disability within a reasonable length of time, including the use of prosthetic appliances but excluding curative treatment for acute or transitory conditions, excepting treatment of medical complications and emergencies as may arise during the rendering of rehabilitation services;

(8)(A) "Rehabilitation" and "rehabilitation services" mean any service, provided directly or through public or private instrumentalities, found by the Director of Arkansas Rehabilitation Services to be necessary to compensate an individual with a disability for his or her employment disability and to enable him or her to engage in a

remunerative occupation or to achieve independent living, including without limitation medical and vocational diagnosis, vocational guidance, counseling and placement, training, physical restoration, transportation, occupational and business licenses, equipment, initial stocks and supplies, maintenance, and training books and materials.

(B) The term covers the establishment and operation of workshops, rehabilitation centers, home industries, and small business enterprises for persons with a visual impairment and individuals with a severe disability;

(9) "Rehabilitation facility" is a facility operated for the purpose of assisting in the rehabilitation of individuals with a disability, which provides one (1) or more of the following types of services:

(A) Testing, fitting, or training in the use of prosthetic devices;

(B) Pre-vocational or conditioning therapy;

(C) Physical, corrective, or occupational therapy;

(D) Adjustment training, or evaluation or control of special impairments; or

(E) Services in which a coordinated approach is made to the physical, mental, and vocational evaluation of individuals with a disability and an integrated program of physical restoration and pre-vocational or vocational training is provided under competent professional supervision and direction;

(10) "Rehabilitation training" means all necessary training provided to an individual with a disability to compensate for his or her employment disability, including, but not limited to, pre-vocational, vocational, and supplementary training and training provided for the purpose of developing occupational skills and capacities;

(11) "Remunerative employment" includes employment in the competitive labor market, practice of a profession, self-employment, homemaking, farm or family work where payment is in kind rather than cash, sheltered employment, home industry, or other homebound work of a remunerative nature;

(12) "Service" means the Arkansas Rehabilitation Services established by this subchapter; and

(13) "Workshop" means a place where any manufacture or handwork is carried on and which is operated for the primary purpose of providing remunerative employment to individuals with a severe disability who cannot be readily absorbed in the competitive labor market.

History. Acts 1955, No. 43, § 3; 1959, No. 34, § 3; A.S.A. 1947, § 80-2542; Acts 2019, No. 389, §§ 82-84.

Amendments. The 2019 amendment substituted "Person with a visual impairment" for "Blind person" in (1) [now (6)]; deleted the former definition for "Director", and redesignated the remaining subdivisions accordingly; substituted "Individual with a disability" for "Disabled individual" in (2) [now (3)]; substituted "disability" for "handicap" in (2)(A) [now (3)(A)]; substituted "Employment disability" for "Employment handicap" in (3) [now (1)]; added the (8)(A) and (8)(B) designations; in (8)(A), substituted "Director of Arkansas Rehabilitation Services" for "director", substituted "an individual with a disability" for "a disabled individual", substituted "employment disability" for "employment handicap", and substituted "without limitation" for "but not limited

to"; substituted "persons with a visual impairment and individuals with a severe disability" for "the blind and severely disabled" in (8)(B); substituted "individuals with a disability" for "disabled person" in the introductory language of (9); substituted "individuals with a disability" for "impaired persons" in (9)(E); in (10), substituted "an individual with a disability" for "a disabled individual", and substituted "employment disability" for "employment handicap"; and substituted "individuals with a severe disability" for "severely disabled individuals" in (13).

20-79-204. Deputy director.

(a) Arkansas Rehabilitation Services shall be administered, under the general supervision and direction of the Division of Workforce Services, by a deputy director, appointed in accordance with established personnel standards and on the basis of education, training, experience, and demonstrated ability in the field of rehabilitation.

(b) In carrying out his or her duties under this subchapter, the deputy director:

(1) Shall, with the approval of the Secretary of the Department of Commerce, prepare rules for promulgation by the appropriate division of the department governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for rehabilitation services, procedures for fair hearings, and such other rules as he or she finds necessary to carry out the purposes of this subchapter, including the order to be followed in selecting those to whom rehabilitation services are to be provided in situations where service cannot be provided to all who are eligible for service;

(2) Shall, with the approval of the secretary, establish appropriate subordinate administrative units within Arkansas Rehabilitation Services;

(3) Shall recommend to the secretary for appointment such personnel as he or she deems necessary for the efficient performance of the functions of Arkansas Rehabilitation Services;

(4) Shall prepare and submit to the secretary and the Governor annual reports of activities and expenditures and, before each regular session of the General Assembly, estimates of sums required to carry out this subchapter, as well as estimates of the amounts to be made available for this purpose from all sources;

(5) Shall make certification for disbursement, in accordance with rules, of funds available for carrying out the purposes of this subchapter; and

(6) May, with the approval of the secretary, delegate to any officer or employee of Arkansas Rehabilitation Services such of his or her powers and duties, except the making of rules and the making of recommendations for appointment of personnel, as he or she finds necessary to carry out the purposes of this subchapter.

History. Acts 1955, No. 43, § 5; 1959, No. 34, § 5; A.S.A. 1947, § 80-2544; Acts 2019, No. 315, §§ 2299, 2300; 2019, No. 910, § 560.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (b)(1) twice, (b)(5), and (b)(6).

The 2019 amendment by No. 910 substituted "Arkansas Rehabilitation Services" for "the Arkansas Rehabilitation Services" throughout the section; substituted "Division of Workforce Services" for "appropriate division of the Department of Human Services" in (a); substituted "Secretary of the Department of Commerce" for "Director of the Department of Human Services" in (b)(1); and substituted "secretary" for "director" throughout (b).

20-79-205. Administration.

The deputy director of the Division of Workforce Services shall provide the rehabilitation services authorized by this subchapter to persons with physical or mental disabilities, including blind citizens and those who can benefit from independent living services, as determined by the Director of Arkansas Rehabilitation Services to be eligible therefor. In carrying out the purposes of this subchapter, Arkansas Rehabilitation Services is authorized, among other things:

(1) To be the sole state agency to supervise and administer the rehabilitation services authorized by this subchapter except such part as may be administered by a local agency in a political subdivision of the state, in which case Arkansas Rehabilitation Services shall be the sole agency to supervise the local agency in the administration of that part;

(2) To enter into reciprocal agreements with other states to provide for the services authorized by this subchapter to residents of the state concerned;

(3) To conduct research and compile statistics relating to the provision of services or the need of services of individuals with a disability;

(4) To license a person with a visual impairment to operate vending stands under its supervision and control and subject to the terms and conditions in rules issued pursuant to § 20-79-204(b)(1) on:

(A) State property;

(B) County or municipal property;

(C) Federal property, pursuant to delegation of authority under the Randolph-Sheppard Act and any amendment thereto or any act of the United States Congress relating to this subject;

(D) Private property; and

(E) Subject to Acts 1945, No. 142, § 2 [superseded]; and

(5) To provide for the establishment, supervision, and control of suitable business enterprises to be operated by individuals with a severe disability, including persons with a visual impairment, where the operation will be improved through the management and supervision of Arkansas Rehabilitation Services.

History. Acts 1955, No. 43, § 6; 1959, No. 34, § 6; A.S.A. 1947, § 80-2545; Acts 2019, No. 315, § 2301; 2019, No. 389, § 85.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in the introductory language of (4).

The 2019 amendment by No. 389 substituted "individuals with a disability" for "disabled individuals" in (3); substituted "a person with a visual impairment" for "blind persons" in the introductory language of (4); and substituted "individuals with a severe disability, including persons

with a visual impairment" for "the severely disabled individual, including the blind" in (5).

20-79-206. Operation of rehabilitation facilities.

(a) Arkansas Rehabilitation Services is authorized to utilize funds made available:

(1) From appropriations by the United States Congress;

(2) By appropriations by the General Assembly;

(3) From the disbursement of funds of other state agencies; and

(4) By gifts, grants, fees for services, sale of products or items of manufacture or handwork, and donations for the purpose of establishing and operating rehabilitation centers, workshops, business enterprises, programs, and home industries and other facilities.

(b) Gifts, grants, fees for services, income from the sale of products or items of manufacture or handwork, and donations may be deposited into one (1) or more banks and expended by the Division of Workforce Services, in compliance with the rules of the Secretary of the Department of Finance and Administration, in the establishment and operation of rehabilitation facilities and such other program services as may be determined by the division, which are consistent with the purposes of this subchapter.

(c) The division is authorized and empowered to lease or purchase public or private property, real, personal, or mixed, for the purpose of establishing and operating rehabilitation facilities.

History. Acts 1955, No. 43, § 7; 1959, No. 34, § 7; A.S.A. 1947, § 80-2546; Acts 2019, No. 315, § 2302; 2019, No. 910, § 3488.

Amendments. The 2019 amendment by No. 315 deleted "and regulations" following "rules" in (b).

The 2019 amendment by No. 910 substituted "Secretary of the Department of Finance and Administration" for "Director of the Department of Finance and Administration" in (b).

20-79-207. Cooperative agreements.

The Division of Workforce Services, through Arkansas Rehabilitation Services, is empowered and directed to:

(1)(A) Cooperate with any other division of the Department of Commerce in an effort to rehabilitate those individuals with a disability who are applicants for or recipients of public assistance.

(B) In this respect, it is the intent of the General Assembly that the employment and self-maintenance of adults with a disability shall be encouraged to the maximum extent.

(C) Arkansas Rehabilitation Services and any other division of the department shall take all necessary steps to implement the intent of this section, including the joint development of plans for orderly referral and processing of feasible cases with priority being given to those for whom rehabilitation is determined most feasible;

(2) Cooperate with the United States Government, pursuant to agreements, in carrying out the purposes of any federal statutes pertaining to the purposes of this subchapter. Arkansas Rehabilitation Services is also authorized to:

(A) Adopt such methods of administration as are found to be necessary for proper and efficient operation of the agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of federal statutes and appropriations;

(B) Administer any legislation pursuant thereto enacted by the State of Arkansas;

(C) Direct the disbursement, and administer the use of, all funds provided by the United States Government or the state for the rehabilitation of individuals with a disability who are residents of Arkansas; and

(D) Do all things necessary to ensure the rehabilitation of individuals with a disability;

(3) Cooperate with other federal, state, and local public agencies and institutions in providing services relating to rehabilitation, including the Arkansas State Employment Service, and make maximum utilization of the job placement and employment counseling services and other services and facilities of the offices in providing the services authorized by this subchapter in studying the problems involved therein and in establishing, developing, and providing such programs, facilities, and services as may be necessary or desirable;

(4) Cooperate with political subdivisions and other public and nonprofit organizations and agencies in the establishment of workshops and rehabilitation facilities and use such facilities as meet the standards established by Arkansas Rehabilitation Services in providing rehabilitation services; and

(5) Enter into contractual arrangements with the Social Security Administration with respect to certifications of disabilities and performance of other duties and with other authorized public agencies for performance of services related to rehabilitation.

History. Acts 1955, No. 43, § 8; 1959, No. 34, § 8; A.S.A. 1947, § 80-2547; Acts 2019, No. 389, § 86.

Amendments. The 2019 amendment added the (1)(A) through (1)(C) designations; substituted "individuals with a disability" for "disabled individuals" in (1)(A) and (2)(D); substituted "adults with a disability" for "disabled adults" in (1)(B); substituted "Arkansas Rehabilitation Services" for "The board" in the introductory language of (2); and substituted "individuals with a disability who are residents of Arkansas" for "disabled persons of Arkansas" in (2)(C).

20-79-213. Eligibility for rehabilitation services.

(a) Rehabilitation services shall be provided to any individual with a disability:

(1) Who is a bona fide resident of the state at the time of filing his or her application therefor and whose rehabilitation the Director of

Arkansas Rehabilitation Services determines, after full investigation, can be satisfactorily achieved; or

(2) Who is eligible therefor under the terms of an agreement with another state or with the United States Government.

(b) However, except as otherwise provided by law or as specified in any agreement with the United States Government with respect to classes of individuals certified to the Division of Workforce Services, the following rehabilitation services shall be provided at public cost only to individuals with a disability found to require financial assistance with respect thereto:

(1) Physical restoration;

(2) Transportation provided for purposes other than to determine the eligibility of the individual for rehabilitation services and the nature and extent of the services necessary;

(3) Occupational and business licenses;

(4) Tools, equipment, initial stock and supplies, including livestock and capital advances, books, and training materials; and

(5) Maintenance.

History. Acts 1955, No. 43, § 12; 1959, No. 34, § 10; A.S.A. 1947, § 80-2551; Acts 2019, No. 389, § 87.

Amendments. The 2019 amendment substituted "individual with a disability" for "disabled individual" in the introductory language of (a); and made a similar change in (b).

20-79-214. Nonassignability and exemption from claims of creditors of maintenance.

The right of individuals with a disability to maintenance under this subchapter shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors.

History. Acts 1955, No. 43, § 13; A.S.A. 1947, § 80-2552; Acts 2019, No. 389, § 87.

Amendments. The 2019 amendment substituted "individuals with a disability" for "disabled individuals".

20-79-215. Hearings.

Any individual applying for or receiving rehabilitation who is aggrieved by any action or inaction of Arkansas Rehabilitation Services shall be entitled to a hearing in accordance with the rules adopted and promulgated by the Division of Workforce Services on that subject.

History. Acts 1955, No. 43, § 15; 1959, No. 34, § 11; A.S.A. 1947, § 80-2554; Acts 2019, No. 315, § 2303.

Amendments. The 2019 amendment substituted "rules" for "regulations".

20-79-216. Use of Arkansas Rehabilitation Services information prohibited — Exception.

It shall be unlawful, except for purposes directly connected with the administration of Arkansas Rehabilitation Services and in accordance with rules, for any person to solicit, disclose, receive, or make use of, or

to authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or name of, or any information concerning persons applying for or receiving rehabilitation, directly or indirectly derived from the records.

History. Acts 1955, No. 43, § 16; 1959, No. 34, § 12; A.S.A. 1947, § 80-2555; Acts 2019, No. 315, § 2304.

Amendments. The 2019 amendment substituted "rules" for "regulations".

Subchapter 3 — Technology Equipment Revolving Loan Fund

SECTION.
20-79-303. Technology Equipment Revolving Loan Fund — Administration.

20-79-303. Technology Equipment Revolving Loan Fund — Administration.

(a) Arkansas Rehabilitation Services shall administer the Technology Equipment Revolving Loan Fund.

(b) Arkansas Rehabilitation Services shall submit to the Technology Equipment Revolving Loan Fund Committee proposed rules governing the operation of the fund, including, but not limited to, eligibility for receipt of funds, purposes for which funds may be available, repayment of funds, administrative adjudications in accordance with Arkansas Administrative Procedure Act, § 25-15-201 et seq., and all other matters consistent with and necessary to accomplish the purposes as set out in this subchapter.

(c)(1) The committee shall be advisers to Arkansas Rehabilitation Services in making loans under this subchapter.

(2) The Director of Arkansas Rehabilitation Services must act on the recommendation of the committee within thirty (30) days of the committee's recommendation or the recommendation of the committee shall be final.

History. Acts 1993, No. 384, §§ 6, 8, 9; 2019, No. 315, § 2305.

Amendments. The 2019 amendment deleted "and regulations" following "rules" in (b).

Subchapter 4 — Telecommunications Devices

SECTION.
20-79-401. Statewide program established.
20-79-402. Eligibility.

20-79-401. Statewide program established.

(a)(1) Arkansas Rehabilitation Services is hereby directed to establish, administer, staff, and promote a statewide program to provide access to public telecommunications services by residents of Arkansas who are deaf, hard of hearing, deaf and blind, severely speech-impaired,

or who have other disabilities that impair their ability to effectively access the telecommunications network. This program will enable these individuals to access specialized devices or services for telecommunications network access that is functionally equivalent to that enjoyed by individuals without disabilities.

(2) This program shall include, but is not limited to:

(A) The purchase and distribution of telecommunications devices and related devices for the persons who are deaf, hard of hearing, deaf and blind, severely speech-impaired, or who have other disabilities that impair their ability to effectively access the telecommunications network;

(B) The promulgation of procedures, rules, and criteria necessary to implement and administer this program, including accountability measures which utilize consumer participation in the selection and evaluation of equipment and the eligibility of applicants; and

(C) Other actions as may be necessary to implement and administer this program which are not otherwise prohibited by law.

(b) Arkansas Rehabilitation Services shall employ at least one (1) full-time staff person to administer the equipment distribution program and may employ any additional support personnel for the program from within existing staff resources to assure statewide coverage for the program.

History. Acts 1995, No. 501, § 1; 2001, No. 530, § 2; 2019, No. 315, § 2306.

Amendments. The 2019 amendment deleted "regulations" preceding "rules" in (a)(2)(B).

20-79-402. Eligibility.

(a) In order for a person to be eligible for the equipment distribution program, a person shall be certified as deaf, hard of hearing, deaf and blind, speech-impaired, or having another disability that impairs the individual's ability to effectively access the telecommunications network by a licensed physician, audiologist, or speech pathologist or by any other method recognized by Arkansas Rehabilitation Services.

(b)(1) Arkansas Rehabilitation Services shall also consider financial need and, in so doing, shall take into account financial need standards or other means tests applicable to other programs administered by Arkansas Rehabilitation Services when promulgating procedures, rules, and criteria necessary to implement and administer the program.

(2) Arkansas Rehabilitation Services may develop a sliding scale of eligibility to provide equipment to individuals exceeding the baseline needs tests mentioned in this section.

History. Acts 1995, No. 501, § 2; 2001, No. 530, § 3; 2019, No. 315, § 2307.

Amendments. The 2019 amendment deleted "regulations" preceding "rules" in (b)(1).

CHAPTER 80

COMMUNITY SERVICES

SUBCHAPTER.

Subchapter 3 — Community Service and Community Action Program Act of 1985

SECTION.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-80-302. Purpose.

(a) The purpose of this subchapter is to encourage nonprofit community action organizations which have been formed to provide basic and essential human services to low income and elderly citizens of Arkansas in the areas of health, transportation, housing, home repair and weatherization, aging programs and aging alternatives to institutionalization, developmental child care and enrichment, youth opportunity programs, and other related activities which the General Assembly recognizes as beneficial to a large number of Arkansas citizens.

(b) It is further the purpose of this subchapter to encourage and promote the operations and activities of community action agencies whether the activities are conducted by one (1) agency or by two (2) or more cooperating agencies.

History. Acts 1985, No. 345, § 1; A.S.A. 1947, § 83-1107; Acts 2019, No. 910, § 3209.

Amendments. The 2019 amendment deleted "low-income home energy assistance programs" preceding "and other related activities" in (a).

20-80-311. Funding — Antipoverty programs.

State funds appropriated by the General Assembly to the appropriate division of the Department of Human Services for payments to be made to recognize community action agencies in accordance with this subchapter shall be used by the agencies for funding antipoverty programs designated by state rules.

History. Acts 1985, No. 345, § 7; A.S.A. 1947, § 83-1113; Acts 2019, No. 315, § 2308.

Amendments. The 2019 amendment substituted "rules" for "regulations".

20-80-312. Funds transfer to Weatherization Assistance Program.

The Department of Human Services shall transfer annually to the Division of Environmental Quality a minimum of fifteen percent (15%) and up to a maximum of twenty-five percent (25%), as allowed by federal law or regulation, of the annual allocation for the Low Income Home Energy Assistance Program to be used by the Weatherization Assistance Program of the Arkansas Energy Office.

History. Acts 2019, No. 790, § 3.

A.C.R.C. Notes. This section was formerly codified as § 25-14-103.

References to "this subchapter" in §§ 20-80-301 to 20-80-311 may not apply to § 20-80-312 which was enacted subsequently.

Subchapter 4 — Commissioner of State Lands Urban Homestead Act

SECTION.
20-80-411. Restrictions — Taxes.

20-80-411. Restrictions — Taxes.

(a) The applicant is responsible for transferring the donated parcel to an eligible person.

(b) The eligibility criteria for the sale, lease, or grant of a homestead shall be established by the Commissioner of State Lands and shall take into account the income of the person or family unit, which shall not exceed the median family income, as determined by the United States Department of Housing and Urban Development, for the area in which the applicant is located.

(c) Upon transferring the land to the eligible person, the homestead will be treated as any other private residence and subject to all laws, rules, and regulations of the government, including the payment of real property taxes.

History. Acts 1993, No. 1009, §§ 2, 13; 2019, No. 315, § 2309.

Amendments. The 2019 amendment inserted "rules" in (c).

CHAPTER 81

VETERANS' AFFAIRS

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-81-101. Arkansas Veterans' Child Welfare Service.

(a)(1) There is established the Arkansas Veterans' Child Welfare Service.

(2) The Arkansas Veterans' Child Welfare Service shall be under the direction of a director to be named by the Governor upon written recommendation by the governing body of the American Legion — Department of Arkansas Foundation, Inc.

(3) The Director of the Arkansas Veterans' Child Welfare Service shall serve at the pleasure of the Governor.

(4) The director shall report to the Secretary of the Department of Veterans Affairs.

(b)(1) The Arkansas Veterans' Child Welfare Service shall establish a program of furnishing temporary and interim welfare and rehabilitation services and assistance for minor children of honorably discharged Arkansas veterans who are deceased or medically incapacitated.

(2) The Arkansas Veterans' Child Welfare Service is authorized to enter into contracts and agreements with one (1) or more veterans' organizations in this state, with private individuals or corporations, or with the United States Government for the sharing of facilities or services and for the administration of funds in furtherance of veterans' child welfare services.

(c) Funds granted to the Arkansas Veterans' Child Welfare Service, other than state-appropriated funds, may be deposited into one (1) or

more bank accounts in banks in this state and shall be administered in accordance with purposes for which the funds were granted as authorized in this section.

History. Acts 1969, No. 189, § 1; A.S.A. 1947, § 11-1409; Acts 1997, No. 100, § 1; 2019, No. 910, § 6329.

Amendments. The 2019 amendment substituted "American Legion — Department of Arkansas Foundation, Inc." for "American Legion Department of Arkansas" in (a)(2); and added (a)(4).

20-81-102. [Repealed.]

A.C.R.C. Notes. The repeal of § 20-81-102 by Acts 2019, No. 910, § 6330 superseded the amendment of § 20-81-102 by Acts 2019, No. 315, § 2310. The amendment by Acts 2019, No. 315 deleted "and regulations" following "rules" in subsection (c).

Publisher's Notes. This section, concerning creation and powers and duties of the Department of Veterans Affairs, was repealed by Acts 2019, No. 910, § 6330, effective July 1, 2019. The section was derived from Acts 1979, No. 324, §§ 1, 2; A.S.A. 1947, §§ 11-1410, 11-1411; Acts 2019, No. 315, § 2310.

For current law, see § 25-43-1601 et seq.

20-81-103. [Repealed.]

Publisher's Notes. This section, concerning the director and employees of the Department of Veterans Affairs, was repealed by Acts 2019, No. 910, § 6331, effective July 1, 2019. The section was derived from Acts 1979, No. 324, §§ 3, 4, 7, 8, 12; A.S.A. 1947, §§ 11-1412, 11-1413, 11-1416, 11-1417, 11-1421; Acts 1993, No. 719, § 1; 2017, No. 387, §§ 1, 2.

For current law, see § 25-43-1601 et seq.

20-81-104. Arkansas Veterans' Commission.

(a) The Arkansas Veterans' Commission is established to:

(1) Serve as the advisory body for the Secretary of the Department of Veterans Affairs;

(2) Serve as a liaison between the Department of Veterans Affairs and a chartered nonprofit veterans organization in this state, including without limitation the:

(A) American Legion;

(B) Department of Arkansas, Veterans of Foreign Wars of the United States;

(C) Disabled American Veterans; and

(D) Arkansas Veteran's Coalition, Inc.;

(3) Promote and advance the interests of Arkansas veterans by meeting and acting as an advisory board to the General Assembly on all matters affecting Arkansas veterans, their dependents, and survivors, including without limitation by meeting with the members of the House Legislative, Military and Veterans Affairs Permanent Subcommittee of the House Committee on Aging, Children and Youth, Legislative and Military Affairs; and

(4) Gather information and data to help improve the operation and efficiency of the veterans' homes established under § 20-81-105 and a

state veterans' cemetery established under § 20-81-112 by consulting with and coordinating with veterans' commissions in other states.

(b)(1) The Arkansas Veterans' Commission shall be composed of fifteen (15) members, who shall be appointed by the Governor and confirmed by the Senate.

(2) Members of the Arkansas Veterans' Commission shall serve for five-year overlapping terms.

(3) The Arkansas Veterans' Commission shall annually elect its chair from among its membership.

(4)(A) Members of the Arkansas Veterans' Commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(B)(i) Members of the Arkansas Veterans' Commission are also authorized to attend conventions, conferences, or meetings of recognized veterans' organizations, herein defined as veterans' organizations listed in the current United States Department of Veterans Affairs Directory of Veterans and Military Service Organizations as meeting the criteria of 38 C.F.R § 14.628, and are entitled to reimbursement for expenses incurred in attending those conventions, conferences, or meetings in accordance with procedures and limits prescribed by law or regulation for state employees.

(ii) However, a member of the Arkansas Veterans' Commission shall not be entitled to reimbursement of the expenses authorized in subdivision (b)(4)(B)(i) of this section unless the reimbursement is approved in advance by the Chair of the Arkansas Veterans' Commission and the secretary.

(C)(i) A member of the Arkansas Veterans' Commission shall not receive more than one thousand dollars ($1,000) during any fiscal year for stipends and reimbursement of expenses incurred as a member of the Arkansas Veterans' Commission unless:

(a) Another member of the Arkansas Veterans' Commission claims less than one thousand dollars ($1,000) in stipends and reimbursement of expenses during the fiscal year; and

(b) The chair, subject to the approval of the secretary, authorizes the transfer of the unclaimed funds authorized by subdivision (b)(4)(C)(i)*(a)* of this section to another member of the Arkansas Veterans' Commission to be used for stipends and reimbursement expenses incurred over the authorized one thousand dollars ($1,000).

(ii) However, a member of the Arkansas Veterans' Commission shall not receive more than two thousand five hundred dollars ($2,500) in stipends and reimbursement of expenses in any fiscal year.

(c) The Arkansas Veterans' Commission shall make recommendations to the secretary for the operation and improvement of the efficiency of the veterans' homes established under § 20-81-105 and the state veterans' cemetery system established under § 20-81-112.

(d) Quarterly meetings of the Arkansas Veterans' Commission are authorized at the call of the chair.

History. Acts 1979, No. 324, § 13; A.S.A. 1947, § 11-1422; Acts 1991, No. 670, § 1; 1993, No. 136, § 1; 1997, No. 250, § 210; 1999, No. 634, § 1; 2017, No. 388, § 1; 2019, No. 910, §§ 6332, 6333.

Amendments. The 2019 amendment substituted "Secretary of the Department of Veterans Affairs" for "Director of the Department of Veterans Affairs" in (a)(1); and, in (c), substituted "secretary" for "director", "veterans' homes" for "Veterans' Home", and "the state veterans' cemetery system" for "a state veterans' cemetery".

20-81-105. Veterans' homes.

(a) The Department of Veterans Affairs is authorized to establish and maintain one (1) or more veterans' homes at locations selected by the Secretary of the Department of Veterans Affairs, after seeking advice from the Arkansas Veterans' Commission.

(b) The department is authorized to employ staff to operate the veterans' homes as it deems appropriate and as authorized by biennial appropriation.

(c)(1) Each veterans' home shall be operated under the supervision of the department.

(2) The secretary shall be the administrative head of the veterans' homes.

(3) The secretary may delegate the administration of each veterans' home to an employee of the department.

(d)(1) The department shall promulgate appropriate guidelines for determining eligibility of veterans for admission to a veterans' home and the monetary charges to be made for veterans residing in a veterans' home. All guidelines shall conform to the federal requirements to qualify veterans' homes as nursing homes for veterans and to render the veterans' homes eligible to receive federal financial assistance.

(2)(A) Notwithstanding the provisions of § 20-8-101 et seq., the veterans' homes may be used as nursing homes for veterans without obtaining a certificate of need.

(B) Bed capacity shall not exceed two hundred twenty (220) beds.

(e) In the administration of the veterans' homes, the secretary is authorized to do the following:

(1) Establish accounts to record the receipt and disbursement of funds from resident veterans to pay for a portion of their maintenance at a veterans' home;

(2) Develop policies for determining charges to be made to resident veterans;

(3) Develop accounts and procedures pertaining to incompetent residents;

(4) Establish procedures and accounts for payment by a veteran's home to its residents for work performed at the veterans' home;

(5) Establish such other accounts as are necessary to the orderly administration of the veterans' homes; and

(6) Establish policies necessary for the operation of the veterans' homes.

(f) At the end of each fiscal year, the secretary shall certify to the Chief Fiscal Officer of the State the amount of nonrevenues to be retained in the Miscellaneous Agencies Fund Account. All other moneys shall be transferred to the General Revenue Allotment Reserve Fund according to existing laws.

History. Acts 1979, No. 324, §§ 5, 6; 1985, No. 432, § 1; A.S.A. 1947, §§ 11-1414, 11-1415; Acts 1987, No. 157, § 2; 1987, No. 202, § 10; 1989 (1st Ex. Sess.), No. 217, § 10; 1999, No. 634, § 2; 2013, No. 165, § 1; 2019, No. 910, § 6334.

Amendments. The 2019 amendment substituted "Veterans' homes" for "Veterans' Home" in the section heading; rewrote (a); substituted "the veterans' homes" for "the home" in (b) and made similar changes throughout the section; substituted "secretary" for "director" in (c)(2), (e), and (f); added (c)(3); substituted "two hundred twenty (220) beds" for "one hundred fifty (150) beds" in (d)(2)(B); and made stylistic changes.

20-81-106. County programs.

Publisher's Notes. This Meaning of "this act" note is being set out to update its internal references.

Meaning of "this act". Acts 1979, No. 324, codified as §§ 20-81-102 [repealed], 20-81-103 [repealed], 20-81-104 — 20-81-109, 25-15-202, 26-52-401.

20-81-107. Gifts, volunteer services, etc.

(a) The Secretary of the Department of Veterans Affairs is authorized to arrange for and accept through such mutual arrangement as may be made the volunteer services, equipment, gifts, facilities, properties, supplies, and personnel of any state, county, and municipal offices and agencies and of veterans' fraternal, welfare, civic, and service organizations in the furtherance of the purposes of this act.

(b) The secretary may accept on behalf of the department from any natural person or legal entity the donation of real property for use as a cemetery for the interment of Arkansas veterans of the United States Armed Forces and their immediate next of kin as defined by the department.

(c) The secretary may accept on behalf of the department from any source the donation of gifts, grants, cash, bequeaths, real or personal property, and equipment for the establishment, construction, maintenance, and operations of any state-owned and state-operated veterans' home.

History. Acts 1979, No 324, § 9; 1985, No. 431, § 1; A.S.A. 1947, §§ 11-1418, 11-1423; Acts 2013, No. 988, § 4; 2019, No. 910, § 6335.

Amendments. The 2019 amendment substituted "Secretary of the Department of Veterans Affairs" for "Director of the Department of Veterans Affairs" in (a); substituted "secretary" for "director" in (b) and (c); and substituted "state-operated veterans' home" for "operated Veterans' Home" in (c).

Meaning of "this act". See note to § 20-81-106.

20-81-108. Action by municipal governing bodies.

(a) County quorum courts, city councils, and other municipal governing bodies are authorized to appropriate money for the purpose of maintaining county and municipal offices jointly with the Department of Veterans Affairs, on either a full-time or part-time basis.

(b) All offices shall be under the supervision of the Secretary of the Department of Veterans Affairs, and all work of the offices shall be coordinated with the department.

History. Acts 1979, No. 324, § 10; A.S.A. 1947, § 11-1419; Acts 2019, No. 910, § 6336.

Amendments. The 2019 amendment substituted "Secretary of the Department of Veterans Affairs" for "Director of the Department of Veterans Affairs" in (b).

20-81-109. Cooperation of other state agencies.

Publisher's Notes. This Meaning of "this act" note is being set out to update its internal reference.

Meaning of "this act". See note to § 20-81-106.

CHAPTER 82

VICTIMS OF VIOLENT CRIMES

SUBCHAPTER.

2. Arkansas Child Abuse/Rape/Domestic Violence Commission.
3. Unlawful Female Genital Mutilation of a Minor.

Subchapter 2 — Arkansas Child Abuse/Rape/Domestic Violence Commission

SECTION.

20-82-211. Child Welfare Ombudsman Division — Creation — Powers and duties.

Effective Dates. Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that some juveniles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that the creation of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile's legal rights; that independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the preservation of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-82-211. Child Welfare Ombudsman Division — Creation — Powers and duties.

(a)(1) There is created within the Arkansas Child Abuse/Rape/Domestic Violence Commission the Child Welfare Ombudsman Division.

(2) The Executive Director of the Arkansas Child Abuse/Rape/Domestic Violence Commission shall:

(A) Hire a Child Welfare Ombudsman; and

(B) Supervise the Child Welfare Ombudsman.

(3) The Child Welfare Ombudsman shall not be supervised by the members of the Arkansas Child Abuse/Rape/Domestic Violence Commission.

(4) The minimum qualifications for the Child Welfare Ombudsman shall include:

(A) A master's degree in:

(i) Social work;

(ii) Psychology; or

(iii) A related field; or

(B) Comparable experience in one (1) or more programs that serve juveniles and families who are involved in dependency-neglect proceedings.

(5) The Child Welfare Ombudsman shall have the following powers and duties:

(A) The duty to work independently of the:

(i) Department of Human Services;

(ii) Administrative Office of the Courts;

(iii) Commission for Parent Counsel;

(iv) Attorney Ad Litem Program;

(v) Arkansas Public Defender Commission; and

(vi) Arkansas Court Appointed Special Advocates program;

(B) The duty to communicate with a:

(i) Juvenile after the approval of, and subject to the conditions set by, the:

(a) Dependency-neglect attorney ad litem appointed to the juvenile; or

(b) Attorney for the juvenile if the juvenile has an attorney other than a dependency-neglect attorney ad litem; and

(ii) Parent of a juvenile after the approval of, and subject to the conditions set by, the attorney for the parent if the parent has an attorney;

(C) The authority to access a record as allowed by law;

(D) The duty to review and recommend necessary changes to procedures under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other laws relevant to the operation of the child welfare system that are applicable to the:

(i) Department of Human Services;

(ii) Division of Arkansas State Police;

(iii) Administrative Office of the Courts;

(iv) Attorney Ad Litem Program;

(v) Commission for Parent Counsel;

(vi) Arkansas Public Defender Commission; and

(vii) Arkansas Court Appointed Special Advocates program;

(E) The duty to review an issue or concern related to a court case or investigation of a juvenile if it appears that the juvenile, parent of the juvenile, foster parent of the juvenile, relative of the juvenile, or fictive kin of the juvenile may need assistance from the child welfare ombudsman;

(F) The duty to provide training and technical assistance if a request is received from:

(i) A member of the child welfare system;

(ii) The General Assembly; or

(iii) The office of the Governor;

(G) The duty to make the public aware of the Child Welfare Ombudsman Division and the contact information for the Child Welfare Ombudsman Division; and

(H)(i) The duty to prepare an annual report concerning the work of the Child Welfare Ombudsman Division, the operation of the child welfare system, and any recommendations related to the operation of the child welfare system.

(ii) The Child Welfare Ombudsman Division shall submit the annual report to the:

(a) Governor;

(b) Secretary of the Department of Human Services;

(c) Director of the Division of Arkansas State Police;

(d) Director of the Division of Children and Family Services;

(e) Director of the Administrative Office of the Courts;

(f) Commission for Parent Counsel;

(g) House Committee on Aging, Children and Youth, Legislative and Military Affairs; and

(h) Senate Interim Committee on Children and Youth.

(iii) The annual report shall not contain information that would identify a juvenile or the family of a juvenile.

(b) As used in this section, "juvenile" means a juvenile as defined in § 9-27-303 who is:

(1) A respondent in a dependency-neglect proceeding held under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.; or

(2) The subject of a child maltreatment investigation under the Child Maltreatment Act, § 12-18-101 et seq.

(c) A record maintained by the Child Welfare Ombudsman Division that pertains to a court case or investigation of a juvenile who is the subject of work performed by the Child Welfare Ombudsman Division is confidential and shall not be disclosed except as permitted under § 9-28-407.

History. Acts 2019, No. 945, § 10.

A.C.R.C. Notes. Acts 2019, No. 945, § 1, provided: "Legislative intent. It is the intent of the General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas".

Subchapter 3 — Unlawful Female Genital Mutilation of a Minor

Effective Dates. Acts 2019, No. 556, § 7: Mar. 26, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Centers for Disease Control and Prevention currently estimates that five hundred fifty-one (551) girls or women in Arkansas are at the risk of, or have undergone, female genital mutilation; that female genital mutilation is recognized globally as a human rights violation; and that this legislation is immediately needed to help the women of Arkansas as soon as possible. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto".

20-82-301. Awareness program established.

The Department of Health shall:

(1) Develop and administer a program of community education, prevention, and outreach activities to address the health risks and emotional trauma inflicted by the practice of unlawful female genital mutilation and to inform communities of the criminal penalties for committing unlawful female genital mutilation;

(2) Develop and disseminate information regarding unlawful female genital mutilation, recognizing the risk factors associated with unlawful female genital mutilation, and the signs that a person may be a victim of unlawful female genital mutilation, and the criminal penalties for committing unlawful female genital mutilation to teachers, and law enforcement personnel, and ensuring their awareness and compliance with the provisions of this section;

(3) Develop policies and procedures to promote partnerships between departments, agencies, and political subdivisions, including without limitation the Department of Human Services and Division of Elementary and Secondary Education, and other governmental entities and nongovernmental organizations to prevent unlawful female genital mutilation and to protect and provide assistance to victims of unlawful female genital mutilation;

(4) Outline best practices for responses to victims of unlawful female genital mutilation; and

(5) Develop policies and procedures for the training of providers of health services:

(A) Regarding best practices for responses to victims of unlawful female genital mutilation; and

(B) To recognize:

(i) The risk factors associated with unlawful female genital mutilation;

(ii) The signs that an individual may be a victim of unlawful female genital mutilation; and

(iii) The criminal penalties for committing unlawful female genital mutilation.

History. Acts 2019, No. 556, § 6.

20-82-302. Statistics required.

(a) Healthcare practitioners of each county shall keep annual statistics and report to the Department of Health cases of unlawful female genital mutilation.

(b) The department shall thereafter compile an annual report of the incidents reported, which will be published with no personal identifying information.

History. Acts 2019, No. 556, § 6.

CHAPTER 83

ARKANSAS FARMERS' MARKET NUTRITION PROGRAM ACT

SECTION.

20-83-107. Rules.

To the extent that funds are available, the Department of Health is authorized to enforce this subchapter and to promulgate necessary rules to implement this subchapter.

History. Acts 1993, No. 1218, § 7; 2019, No. 315, § 2311.

Amendments. The 2019 amendment deleted "and regulations" following "Rules" in the section heading and following "rules" in the section text.

CHAPTER 86

FAMILY SAVINGS INITIATIVE ACT

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled 'Funding and classification of cabinet-level department secretaries' and 'Transformation and Efficiencies Act transition team' should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019".

20-86-105. Proposals.

(a)(1) The Division of Workforce Services shall enter into contracts with one (1) or more fiduciary organizations pursuant to the provisions of this section in such a manner that different regions of the state are served by one (1) or more fiduciary organizations.

(2)(A) An organization based in this state which desires to enter into such a contract shall submit a proposal to the division for the right to be approved as a fiduciary organization.

(B) Proposals shall be made upon forms prescribed by the division and shall contain such information as the division may require.

(b) Organizations' proposals shall be evaluated and contracts awarded by the division on the basis of such items as geographic diversity and an organization's:

(1) Ability to market the project to potential account holders;

(2) Ability to leverage additional matching and operating funds;

(3) Ability to provide safe and secure investments for individual accounts;

(4) Overall administrative capacity, including, but not limited to, the certifications or verifications required to assure compliance with eligibility requirements, authorized uses of the accounts, matching contributions by individuals or businesses, and penalties for unauthorized distributions;

(5) Capacity to provide financial counseling and other related service to potential participants;

(6) Capacity to provide other activities designed to increase the independence of individuals and families through home ownership, small business development, enhanced education and training, saving for retirement, and automobile purchase, or to provide links to such other activities; and

(7) Operating costs.

(c)(1) For each contract entered into pursuant to the provisions of this section, the contract shall begin no later than October 1 of each year.

(2)(A) The fiduciary organization shall use not less than seventy percent (70%) for matching funds and not more than thirty percent (30%) for operating and administrative costs.

(B) Administrative costs shall be limited to ten percent (10%) of the contract.

(d) Responsibilities of a fiduciary organization shall include, but not be limited to, marketing participation, soliciting matching contributions, counseling project participants, conducting basic economic and financial literacy training and individual development account use training for project participants, and conducting required verification and compliance activities.

(e) Neither a fiduciary organization nor an employee of or person associated with a fiduciary organization shall receive anything of value, other than compensation for services, for any act performed in connection with the establishment of an individual development account or in furtherance of the provisions of this subchapter.

History. Acts 1999, No. 1217, § 5; 2007, No. 252, § 2; 2019, No. 910, §§ 561, 562.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(1); and substituted "division" for "department" throughout (a)(2) and in (b).

20-86-106. Individual development account.

(a)(1) An individual who is a resident of this state may submit an application to open an individual development account to a fiduciary organization approved by the Division of Workforce Services pursuant to the provisions of § 20-86-105.

(2) The fiduciary organization shall approve the application only if:

(A) The individual has gross household income from all sources for the calendar year preceding the year in which the application is made that does not exceed one hundred eighty-five percent (185%) of the federal poverty level; and

(B) The individual's household net worth at the time the individual development account is opened does not exceed ten thousand dollars ($10,000) disregarding the primary dwelling and one (1) motor vehicle owned by the household.

(b) An individual opening an individual development account shall be required to enter into an individual development account agreement with the fiduciary organization.

(c) The fiduciary organization shall be responsible for coordinating arrangements between the individual and a financial institution to open the individual's individual development account.

(d)(1)(A) Each fiduciary organization shall provide written notification to each of its eligible individual development account holders of the amount of matching funds provided by the fiduciary to which each such individual development account holder is entitled.

(B) Such notification shall be made at such intervals as the fiduciary organization deems appropriate but shall be required to be made at least one (1) time each calendar year.

(2) The amount of such matching funds for each individual development account holder shall be three dollars ($3.00) for each one dollar ($1.00) contributed to the individual development account by the individual development account holder during the preceding calendar year. The amount of such matching funds shall not exceed two thousand dollars ($2,000) per individual development account holder or four thousand dollars ($4,000) per household.

(3) If the amount of matching funds available is insufficient to disburse the maximum amounts specified in this subsection, amounts of disbursements shall be reduced proportionately based upon available funds.

(e) If an individual development account holder has gross household income from all sources for a calendar year which exceeds one hundred eighty-five percent (185%) of the federal poverty level, the individual development account holder shall not be eligible to receive funds pursuant to the provisions of subsection (d) of this section in the following year.

(f)(1) In the event of an individual development account holder's death, the individual development account may be transferred to the ownership of a contingent beneficiary or beneficiaries. An individual development account holder shall name a contingent beneficiary or beneficiaries at the time that the individual development account is established and may change the beneficiary or beneficiaries at any time.

(2) If the named beneficiary or beneficiaries are deceased or cannot otherwise accept the transfer, the moneys shall be transferred to the fiduciary organization to redistribute as matching funds.

History. Acts 1999, No. 1217, § 6; 2007, No. 252, § 3; 2019, No. 910, § 563.

Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a)(1).

20-86-109. Matching funds.

(a)(1) Any individual, business, organization, or other entity may contribute matching funds to a fiduciary organization.

(2) The funds shall be designated to the fiduciary organization to allocate to participants who meet the requirements in § 20-86-106.

(b)(1) A credit shall be allowed against the income tax liability imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for any Arkansas taxpayer who contributes to a fiduciary organization created pursuant to this subchapter in an amount equal to fifty percent (50%) of the amount of matching funds contributed to a fiduciary organization during the calendar year.

(2) The amount of the credit that may be used by a taxpayer for a taxable year shall not exceed the lesser of twenty-five thousand dollars ($25,000) or the amount of individual or corporate income tax otherwise due.

(c) Any unused credit may be carried over for a maximum of three (3) years up to a total tax credit allowed in the amount of twenty-five thousand dollars ($25,000).

(d)(1)(A) To claim the benefits of this section, a taxpayer must notify the fiduciary organization that the taxpayer intends to make a contribution and the amount of the contribution.

(B) The fiduciary organization shall then notify the Division of Workforce Services and request a certification from the division certifying the amount of the tax credit to which the taxpayer is entitled.

(C) The fiduciary organization shall deliver the certification to the taxpayer upon receipt of the contribution.

(2) A taxpayer must file the certificate with the taxpayer's income tax return for the first year in which the taxpayer claims a tax credit under this subchapter.

(e) The total amount of tax credits certified under this subchapter shall not exceed one hundred thousand dollars ($100,000) per calendar year.

(f) The Department of Finance and Administration shall promulgate any rules necessary to carry out the provisions of this section.

(g) The division may monitor the use of these funds by fiduciary organizations.

History. Acts 1999, No. 1217, § 9; 2007, No. 252, § 4; 2009, No. 1468, §§ 1, 2; 2019, No. 315, § 2312; 2019, No. 910, §§ 564, 565.

Amendments. The 2019 amendment by No. 315 substituted "rules" for "regulations" in (f).

The 2019 amendment by No. 910 substituted "Division of Workforce Services" for "Department of Workforce Services" twice in (d)(1)(B) and in (g).

20-86-111. Reporting requirements.

Each fiduciary organization shall provide quarterly to the Division of Workforce Services the following information:

(1) The number of individuals making deposits into an individual development account;

(2) The amounts deposited into the individual development account;

(3) The amounts not yet allocated to individual development accounts;

(4) The amounts withdrawn from the individual development accounts and the purposes for which the amounts were withdrawn;

(5) The balances remaining in the individual development accounts;

(6) The service configurations such as peer support, structured planning exercises, mentoring, and case management that increased the rate and consistency of participation in the demonstration project and how such configurations varied among different populations or communities; and

(7) The number of grievances filed, the resolution of the grievances, and any penalties imposed.

History. Acts 1999, No. 1217, § 11; 2007, No. 252, § 5; 2019, No. 910, § 566.
Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in the introductory language.

20-86-112. Implementation.

The Division of Workforce Services shall be responsible for implementation of this subchapter and shall promulgate rules as necessary in accordance with the provisions of this subchapter.

History. Acts 1999, No. 1217, § 13; 2007, No. 252, § 5; 2019, No. 910, § 567.
Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services".

20-86-113. Reports — Recommendations.

(a) The Division of Workforce Services shall prepare a written report annually regarding the implementation of this act and shall make recommendations for improving the program.

(b) The report shall be transmitted to the General Assembly on or before August 1 of each year.

History. Acts 1999, No. 1217, § 12; 2007, No. 252, § 5; 2019, No. 910, § 568.
Amendments. The 2019 amendment substituted "Division of Workforce Services" for "Department of Workforce Services" in (a).